



ADMINISTRATIVE COMMITTEE MEETING NOTICE/AGENDA

Posted at www.scdd.ca.gov

DATE: March 26, 2014
TIME: 1:00 - 3:00 p.m.
LOCATION: State Council on Developmental Disabilities
1507 21st Street, Suite 210
Sacramento, CA 95811
(916) 322-8481

TELECONFERENCE SITE:

Area Board 4
236 Georgia Street, Suite 201
Vallejo, CA 94590

Area Board 11
2000 E. Fourth Street, Suite 115
Santa Ana, CA 92705

Pursuant to Government code Sections 11123.1 and 11125(f), individuals with disabilities who require accessible alternative formats of the agenda and related meeting materials and/or auxiliary aids/services to participate in this meeting should contact Robin Maitino at (916) 322-8481 or email robin.maitino@scdd.ca.gov. Requests must be received by 5:00 pm March 20, 2014.

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|---|------------|----------|
| 1. CALL TO ORDER | M. KENNEDY | |
| 2. ESTABLISHMENT OF QUORUM | M. KENNEDY | |
| 3. WELCOME/INTRODUCTIONS | M. KENNEDY | |
| 4. APPROVAL OF FEBRUARY 27, 2014 MINUTES | M. KENNEDY | 3 |

5. PUBLIC COMMENTS

This item is for members of the public only to provide an opportunity to comments and/or present Information to the Committee on matters **not** on the agenda. Each person will be afforded up to three minutes to speak. Written requests, if any, will be considered first. The Committee will provide a public comment period, not to exceed a total of seven minutes, for public comment prior to action on each agenda item.

6. APPROVE NEW CAPTIONING CONTRACT	R. NEWTON	5
7. DRAFT 2014-15 BUDGET	NEWTON/CACH	
8. REVIEW OF 2014 WORK PLAN	R. NEWTON	12
9. REVIEW OF REGIONAL CENTER CONFLICT OF INTEREST WAIVER PROCESS	R. NEWTON	19,
10. REVIEW OF SAMPLE DSA MOU'S	ALL	24
11. DEVELOPMENT OF FACILITATION POLICY	ALL	42
12. OTHER POLICIES AND PROCEDURES	ALL	
13. FUTURE AGENDA ITEMS	ALL	
14. ADJOURNMENT	M. KENNEDY	

For additional information regarding this agenda, please contact Robin Maitino,
1507 21st Street, Suite 210, Sacramento, CA 95811, (916) 322-8481

DRAFT

**Administrative Committee Meeting Minutes
February 27, 2014**

Attending Members

Brian Gutierrez
David Forderer
Kris Kent
Molly Kennedy
Ning Yang
Ray Ceragioli

Members Absent

Others Attending

Lynn Cach
Melissa Corral
Nancy Dow
Roberta Newton
Robin Maitino
Wayne Glusker
Mark Polit
Ed Steele
Sandra Smith

1. **Call to Order**

Molly Kennedy called the meeting to order at 1:06 p.m.

2. **Welcome and Introductions**

Members and others introduced themselves. Molly Kennedy thanked Melissa for her years of service and wished her luck at her new position.

3. **Approval of the January 22, 2014 Minutes**

It was moved/seconded (Ceragioli/Forderer) and carried to approve the January 24, 2014 minutes as presented.

4. **Public Comments**

There were no public comments.

5. **Mid-Year Expenditure Reports**

Roberta Newton went over the handouts provided and explained in detail what each column represented and what the budget gap would look like if vacancies were filled. Molly requested that staff add an additional column to the Headquarters Budget Analysis spreadsheet entitled "Percentage Expended".

Roberta also provided an update on the October billing that was submitted almost a month ago to AIDD. She met via teleconference with AIDD earlier in the day and the feedback provided from fiscal staff was overall positive.

6. **Draft 2014-15 Budget**

Roberta went over the handouts provided to the Committee again pointing out that we need to close the gap in the budget. The Committee discussed ways that could be accomplished. One possibility would be to reduce grant funding slightly or perhaps alternate years for statewide and local grants.

Molly requested that we have the 2014-15 proposed budget go to the Council for review/approval by the May meeting. She also requested that a column be added to the budget document that showed last year's budget along with a column that showed the proposed budget. Kris Kent suggested possibly presenting a "premise budget" in narrative form to the Council for approval rather than a spreadsheet. The "premise budget" would propose possible deficit resolutions and would be easier for the layman to understand.

7. **Recommendations for Grant Funding Level for Cycle 37**

It was moved/seconded (Yang/Forderer) and carried allocate \$350,000 for Cycle 37 Grants. (2 abstentions)

8. **Review of 2014 Work Plan**

This item was deferred.

9. **Review of Sample DSA MOU's**

This item was deferred.

10. **Review of Contract Manual**

It was moved/seconded (Forderer/Yang) and carried present the Contracting and Purchasing Policies and Procedures manual to the Executive Committee for their input.

11. **Other Policies and Procedures**

This item was deferred.

12. **Schedule 2014 Meetings and Future Agenda Items**

Future meetings will be held the 4th Wednesday of the month from 1-3 PM.

13. **Adjournment**

Molly Kennedy adjourned the meeting at 3:05p.m.

STATE OF CALIFORNIA
STANDARD AGREEMENT
 STD 213 (REV 02/96)

AGREEMENT NUMBER	AMENDMENT NUMBER
EC1416	

1. This Agreement is entered into between the State Agency and the Contractor named below

STATE AGENCY'S NAME
California State Council on Developmental Disabilities

CONTRACTOR'S NAME
Official Realtime Captioning Associates, Inc. dba eCaptions.com

2. The term of this Agreement is: **March 1, 2014 through June 30, 2015**

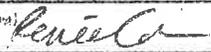
3. The maximum amount OF \$ **10,600.00**
 of this Agreement is: **TEN THOUSAND SIX HUNDRED DOLLARS AND ZERO CENTS**

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:
 This contract is entered into by and between the California State Council on Developmental Services (SCDD), hereinafter referred to as the SCDD, and Official Realtime Captioning Associates, Inc., dba eCaptions.com, hereinafter referred to as Contractor, to provide real time captioning for statewide meetings, conferences and or training purposes, in accordance with the following exhibits which are attached hereto and made a part of this contract.

- Exhibit A -- Scope of Work 1 Page
- Exhibit B -- Budget Detail and Payment Provision 2 Pages
 Attachment I, Budget 1 Page
- * Exhibit C -- General Terms and Conditions GTC 201
- Exhibit D -- Special Terms and Conditions 2 Pages

*View at www.dgs.ca.gov/contracts

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR	CALIFORNIA Department of General Services <i>Use Only</i>
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) Official Realtime Captioning Associates, Inc. dba eCaptions.com	
BY (Authorized Signature) 	DATE SIGNED (Do not type) 3/12/14
PRINTED NAME AND TITLE OF PERSON SIGNING Renee Cohen, President	
ADDRESS 1106 Second Street, #282 Encinitas, California 92024	
STATE OF CALIFORNIA	
AGENCY NAME California State Council on Developmental Disabilities	
BY (Authorized Signature) 	DATE SIGNED (Do not type) 3/12/14
PRINTED NAME AND TITLE OF PERSON SIGNING Roberta Newton, Interim Executive Director	
ADDRESS 1507 -21st Street, Suite 210, Sacramento, CA 95811	
<input type="checkbox"/> Exempt per _____	

**Exhibit A
(Standard Agreement)**

Scope of Work

- A. Official Realtime Captioning Associates, Inc. dba eCaptions.com, hereinafter referred to as Contractor, shall provide to the State Council on Developmental Disabilities (SCDD), for Real Time Captioning, to meet the needs of the SCDD for meetings, conferences and/or training purposes.
- B. Locations: Real Time Captioning will be provided Statewide. Most events will take place in Sacramento. A maximum of 4 events may take place in other locations throughout the State.
- C. Service Hours: Monday through Friday, 9:00 a.m. to 6:00 p.m., holidays excluded.
- D. Contractor's Responsibilities:
1. Contractor is responsible for bringing his/her own laptop and any other necessary equipment needed for each meeting, conference, and/or training.
 2. Contractor will provide the notes electronically from each meeting, conference and/or training within 48 hours of the meeting adjourning to the contract representative.
 3. Contractor will make own travel and/or hotel arrangements for all meetings.
 4. Provide same certified level qualified backup personnel, in the event the designated staff person is unable to provide services on the scheduled dates.
 5. Contractor must have a minimum of 3 years' experience performing live captioning services.
 6. The Contractor will supply 2 company references and resumes of all personnel performing live captioning service within this agreement.
- E. Timeframes:
- The term of this agreement shall be for a two year period from time of contract approval.
- F. Special Conditions:
1. The SCDD will request no less than ten (10) days at eight (8) hours per day of Real Time Captioning Services and no more than twenty (20) days at eight (8) hours per day of Real Time Captioning Services per State Fiscal year.
 2. Standard cancellation time will be no less than two (2) working days Monday through Friday) from the time the first hour of service was to be provided.

G. The contract representatives during the term of the agreement will be:

Roberta Newton, Interim Executive Director
State Council on Developmental Disabilities
1507 – 21st Street, Suite 210
Sacramento, CA 95811
(916) 322-8481

Renee Cohen, President
eCaptions
1106 Second Street, #282
Encinitas, CA 92024
(858) 794-6811

EXHIBIT B
(Standard Agreement)

BUDGET DETAIL AND PAYMENT PROVISIONS

A. Invoicing and Payment

1. The maximum amount payable under this agreement shall not exceed **\$10,600.00**. Shown below are the amounts that cannot be exceeded for each fiscal year(s):

2013/14 - **\$4,800.00**

2014/15 - **\$5,800.00**

2. For services satisfactorily rendered and upon receipt and approval of the invoice(s), the State Council on Developmental Disabilities (SCDD) agrees to reimburse Contractor for said services in accordance with Exhibit B.
3. Invoices shall include the Agreement Number EC1416 and Index Code 1100, and shall be submitted in triplicate not more frequently than monthly in arrears to:

State Council on Developmental Disabilities

1507 21st Street, Suite 210

Sacramento, CA 95811

Attention: Roberta Newton, Interim Executive Director

B. State Budget Contingency Clause

1. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, SCDD shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
2. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, SCDD shall have the option to either cancel this Agreement with no liability occurring to SCDD, or offer an agreement amendment to Contractor to reflect the reduced amount.

C. For Contracts With Federal Funds

1. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of Congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.

2. This Agreement is valid and enforceable only if sufficient funds are made available to the SCDD by the United States Government for the term of this Agreement for the purposes of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.
3. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
4. The SCDD has the option to void the Agreement under the 30-day cancellation clause or to amend the Agreement to reflect any reduction of funds.

D. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

E. Reviews

Each party reserves the right to review service levels and billing procedures as these impact charges against this Agreement.

F. Final Billing

Final billing for services must be received by SCDD within 90 days following the end of the contract.

EXHIBIT D
(Standard Agreement)

SPECIAL TERMS AND CONDITIONS

A. Dispute Provisions

1. If the Contractor disputes a decision of the State's designated representative regarding the performance of this Agreement or on other issues for which the representative is authorized by this Agreement to make a binding decision, Contractor shall provide written dispute notice to the State's representative within fifteen (15) calendar days after the date of the action. The written dispute notice shall contain the following information:
 - a. the decision under dispute;
 - b. the reason(s) Contractor believes the decision of the State representative to have been in error (if applicable, reference pertinent contract provisions);
 - c. identification of all documents and substance of all oral communication which support Contractor's position; and
 - d. the dollar amount in dispute, if applicable.

2. Upon receipt of the written dispute notice, the SCDD Executive Director will examine the matter and issue a written decision to the Contractor within fifteen (15) calendar days. The decision of the representative shall contain the following information:
 - a. a description of the dispute;
 - b. a reference to pertinent contract provisions, if applicable;
 - c. a statement of the factual areas of agreement or disagreement; and

3. The decision of the SCDD Executive Director shall be final unless, within thirty (30) days from the date of receipt of the SCDD Executive Director's decision, Contractor files with the California State Council on Developmental Disabilities a notice of appeal, in accordance with Title 1, California Code of Regulations, Section 251, et.seq., and addressed to:

State Council on Developmental Disabilities
1507 21st Street, Suite 210
Sacramento, CA 95811
Attention: Executive Committee Chair

Pending resolution of any dispute, Contractor shall diligently continue all contract work and comply with all of the representative's orders and directions.

EXHIBIT D
(Standard Agreement)

B. Termination Without Cause

This Agreement may be terminated without cause by the State upon 30 days written notice to the Contractor.

C. Debarment and Suspension

For federally funded agreements in the amount of \$100,000 or more, the Contractor agrees to certify that he/she and their principals are not debarred or suspended from federal financial assistance programs and activities. Contractor agrees to sign and return to SCDD the "Certification regarding Debarment, Suspension, Ineligibility and voluntary Exclusion-Lower Tier Transactions". If applicable, a copy of this form is being forwarded to the Contractor with this Agreement. (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17).

D. Certification Regarding Lobbying

For Agreements with Contractors who are State entities not under the authority of the Governor, or cities, private firms or agencies which are receiving in excess of \$100,000 in federal funds from SCDD to perform services, the Contractor agrees to sign and submit to SCDD the 'Certification Regarding Lobbying' form which is being forwarded to the Contractor with this Agreement. (Section 1352, Title 31 of the U.S. Code).

DRAFT

Administration on Intellectual /Developmental Disabilities (AIDD) 2013 Monitoring and Technical Assistance Review System (MTARS)

Administrative Work Plan

Findings	Tasks	Next Steps/Timeline
<p>It was unclear how much the Council pays for the DSA functions. No written policy around the formula for the DSA indirect rate. (Assurances 125(c)(5)(B-D) and (K-L))</p>	<p>Executive Director to seek TA to clarify DSA vs General Management costs. MTARS response addressed this</p>	<p>Executive Director consulted with NACDD staff. NACDD Fiscal Manual provided to Admin members Will await response from AIDD to determine next steps Demonstrates need for MOU to clarify (see below)</p>
<p>There was a lack of clarity on whether there is State Financial Participation. (Assurances as above)</p>	<p>MTARS response addressed this</p>	<p>Will await response from AIDD before determining next steps</p>
<p>The Council did not provide adequate evidence on how it developed and implemented its budget to fund programs, projects and activities. Council members expressed a strong need for more fiscal transparency and training on state versus federal fiscal policy and the Council's development/implementation process</p>	<p>SCDD to add to response that more detailed line item budget is being developed for 2014-15.</p>	<p>Draft 2014-15 budget to be reviewed at February 2014 Admin meeting 2013-14 mid-year expenditure report to be reviewed at February 2014 Admin meeting Mid-Year report to be presented at March Council meeting. Draft 2014-15 budget to be presented at May Council meeting</p>
<p>The team could not determine how the budget is developed and executed and how expenditure data is calculated.</p>	<p>Admin Committee will make recommendations regarding funding levels (HQ, Grants, regional offices) to Council</p>	<p>February 2014 Admin meeting; May 2014 Council meeting</p>

<p>The Council did not provide adequate evidence that it has accurate financial accounting and record keeping.</p>	<p>SCDD and CDSS accounting documents were furnished as part of MTARS response</p>	<p>Will await recommendations of AIDD</p>
<p>The council could provide only limited information on the Council's fiscal policies during the on-site visit pertinent to the requirements in the DD Act</p>	<p>Admin/SCDD to review and revise Contract and Purchasing Manual Executive Director (ED) to seek sample fiscal policies from NACDD</p>	<p>First level review of Manual occurred in January 2014. Additional review will occur at February meeting. Council action is anticipated at May 2014 Council meeting. ED has received sample fiscal policies from other State Councils.</p>
<p>The state auditor's findings substantiate the immediate need for fiscal management systems. (Reference: California Department of Finance Management Letter dated August 17, 2012)</p>	<p>As of January 2014, the Council is aggressively recruiting for a Chief Deputy. Contract staff have had training during 2013 and are signed up for relevant classes as they are scheduled in 2014.</p>	<p>Goal is to have a job offer made by March 2014.</p>
<p>The DSA need to establish processes, policies, and procedures that promote:</p> <ul style="list-style-type: none"> • Accurate receipt, accounting, and disbursement of funds • Provision of appropriate fiscal control and fund accounting procedures necessary to assure proper disbursement of, and accounting for, funds paid • Access to records as the Secretary and Council may determine necessary • Timely development and dissemination of financial reports regarding status of expenditures, obligations, and liquidation by agency or Council and use of Federal and non-Federal share 	<p>Executive Director and DSA Representative Kris Kent need to re-start negotiations with CDSS regarding the scope and amount of the Interagency Agreement for administrative support services.</p>	
<p>The Council does not have a Memorandum</p>	<p>The Council sought and received sample</p>	<p>Review sample MOUs from other states by</p>

<p>of Understand with the DSA</p>	<p>MOUs from other State Councils. The Administrative Committee will oversee the negotiations process to develop an MOU with CHHS</p>	<p>April 2014. Draft MOU and meet with DSA to discuss by July 2014. Revise and meet with DSA by July 2014. Revise and meet again if necessary by September 2014. Execute and sign by Council Chair by November 2014 Council meeting.</p>
<p>There was no evidence that the Council conducted a formal evaluation of the DSA at anytime</p>	<p>Prior to developing a draft MOU, Administrative Committee will evaluate DSA's current functions; compare to requirements of DD Act and to MOUs of other states. Executive Director to request technical assistance from NACDD.</p>	<p>Evaluation of DSA to occur prior to developing MOU (April—May 2014)</p>
<p>Several staff positions and DSA functions appear duplicative. Several DSA functions are performed by Council staff at the center office, specifically in the area of: contracting, budgeting, fiscal and personnel</p>	<p>MTARS response addressed this</p>	

ADDITIONAL ADMINISTRATIVE ACTIVITIES

Recommendations	Tasks	Next Steps/Timeline
<p>Establish internal control procedures for processing and approval of contracts and invoices There need to be signed authorization forms that document approval steps for contracts.</p>	<ul style="list-style-type: none"> Establish chain of command and process for documenting progressive review of submissions. Establish policy for required backup documentation when submitting invoices. 	

Recommendations	Tasks	Next Steps/Timeline
<p>Develop a Procurement and Contract Manual that includes progressive steps, staff assignments, review and authorization forms</p> <p>In lieu of Chief Deputy, assign staff to perform duties of contract manager to include monitoring compliance and performance.</p>	<p>In development</p>	<p>Anticipated completion of December 31, 2014</p>
<p>Contracts need to be reviewed for justification that work cannot be performed by state employees per GC 19130</p>	<p>Procurement and Contract Manual to include provision for review of prospective contracts by Planning Specialist for compliance with GC 19130. Before posting a personal services contract, Specialist shall identify any current state staff that may perform duties within the scope of requested services and advise SCDD of contract appropriateness.</p>	
<p>There need to be written policies and procedures that inform members and staff of their responsibilities.</p>	<p>This should be included in Contract Manual</p>	
<p>SCDD needs to develop a comprehensive manual of Personnel policies and corresponding forms.</p>	<p>Assess what currently exists. Compare to what other similar-sized departments utilize.</p>	

MAJOR TASKS, GOALS & ACTIVITIES							TARGET DATE/ FREQUENCY	Responsibility	Completed	Committee Approved	Council Approved	
1. Legislation Revision												
1.1 Governor's Authority to Hire Council Staff, Area Board representatives and continuation of service												
	1.1.	Select legislator (Chesbro) to carry legislative changes	1/17/14	Polit	Yes							
	1.2.	Review of Lanterman Act for applicable sections for revisions	Feb 1—Mar 31	Polit MTARS Comm	Yes							
	1.3.	Write new language for sections identified to be revised or deleted to comply with DD Act	Feb 1 – Mar 31	Polit MTARS Comm								
	1.4.	Council to approve new legislative concepts	3/20/2014	Council								
	1.5.	Chesbro to introduce language to legislature	3/26/2014									
	1.6.	Governor signs bill	September									
	1.7.	Legislation to take effect	1/1/2015									

II. By-Law Amendments

II.1 Membership Committee						
11.1.	Write language to change by-laws to create membership committee	2/7/14	Corral/Newton	Yes		
11.2.	Start E-mail campaign by local area offices to recruit new members to State Council.	2/28/2014	Newton/local area offices	Yes		
11.3.	Council to approve changes to by-laws to create membership committee	3/20/2014	Council			
11.4.	Chair to make appointments to membership committee	5/9/2014	Chair			
11.5.	First committee meeting to be held	6/2014	Chair			
11.6.	Membership committee to meet quarterly	Quarterly	Chair			
11.7.	Provide status update to Governor's Office quarterly.	Jul 1 and then quarterly	Chair			
II.2 State Plan Committee						
11.8.	Write language to change by-laws to re-constitute a combined State Plan and Grant Committee	March Council/April Exec Committee	Newton			
11.9.	Council to approve changes to by-laws to re-constitute State Plan Committee	3/20/2014	Council			
11.10.	Chair to make appointments to State Plan Committee	4/1/2014	Chair	Yes		

	II.11.	First meeting held	6/30/2014					
	II.12.	Meetings held quarterly	Ongoing					
	II.13.	Quarterly Progress Reports	10/1/2014 and then quarterly	Chair				
III. Administrative Committee and Designated State Agency Review								
	III.1.	Evaluate current Memorandum of Understanding (MOU) & review other states MOUs	4/2014	Admin Comm				
	III.2.	Draft MOU and meet with DSA to discuss review by July 2014 Administrative Committee	7/2014	Admin Comm				
	III.3.	Meet with DSA and discuss/revise as needed draft MOU	9/2014	Admin Comm				
	III.4.	Execute and sign MOU	11/2014	Admin Comm				
	III.5.	Evaluate the DSA	6/2014	Admin Comm				
	III.6.	Revise Contract Manual Submit to Exec Committee for review	2/27/2014 4/2014	Admin Chair	Yes			
	III.7.	Approve Contract Manual	5/2014	Council				
	III.8.	Complete comprehensive Policy and Procedure Manual	12/31/2014	Admin Comm				

DATE: SEPTEMBER 2011
Modified on December 10, 2013 by Executive Committee

TO: SCDD STAFF, COUNCIL AND LOCAL AREA MEMBERS

FROM: STATE COUNCIL ON DEVELOPMENTAL DISABILITIES

RE: REGIONAL CENTER REQUESTS FOR WAIVER OF CONFLICT OF INTEREST CRITERIA PROCEDURE

The purpose of these procedures is to establish consistent evaluation criteria and process of requests for waivers in accordance with Welfare and Institutions Code Sections 4622 *et seq.* and Title 17 Section 54520. These procedures shall be used by the California State Council on Developmental Disabilities (Council) and local area boards.

*These procedures may be revised in accordance with regulatory changes.

WAIVER OF CONFLICT OF INTEREST EVALUATION PROCESS

If there is good reason that a RC is unable to meet all of the criteria for their board, the director of DDS may waive the criteria for a period of time, not to exceed one year, with the approval of the appropriate area board and the Council in accordance with WIC 4628.

The Council/area board procedure for evaluating requests for waiver shall be:

1. When area board receives a request for a waiver, it shall be scheduled for discussion and action during the next available area board meeting.
2. When evaluating a request for waiver for a regional center board member, the area board shall discuss and analyze the following:
 - a. Does the RC have and utilize a public board member recruitment process? If not, what recruitment efforts were implemented with respect to the board member in question?
 - b. What specific criteria are involved in the request? Is the individual prohibited from serving based on the statute (C. 1-4 above) or regulation (C. 5-7 above) or both?

- c. Does the proposed mitigation plan effectively address avoidance of the identified conflict of interest?
 - d. What impact will the approval/denial of the waiver have on the RC board?
 - e. Has the RC requested a waiver on behalf of the same individual before? If so, how long ago?
3. When evaluating a request for waiver for a regional center employee, the area board shall discuss and analyze the following:
- a. Does the proposed mitigation plan effectively address avoidance of the identified conflict of interest? If not, can the area board suggest alternatives?

AND

- b. Before any action is taken on a waiver request by a regional center employee is made, the area board **must** contact staff counsel at SCDD HQ.
4. Upon evaluating the request, the area board shall take action to approve/deny the waiver request unless additional information is requested from RC.
5. Within 5 business days of taking action, the area board shall forward their analyses and action to the Council.
6. The Council shall schedule a discussion and action for the next available regular Council meeting. During the discussion, the Council shall review the area board analyses. The Council shall take action to approve/deny the waiver unless further information is requested from the area board.
7. The Council shall submit their action to DDS within 5 business days.

REFERENCE STATUTORY AND REGULATORY BACKGROUND

A. Regional Center Conflict of Interest Policy

The establishment and implementation of a conflict of interest policy and reporting process for regional centers (RC) is intended to minimize, if not eliminate, the occurrence of conflicts of interest in certain settings. This seeks to ensure that the RC board members act in the course of their duties solely in the best interest of the consumers and their families without regard to the interest of any other organization with which they are associated.

Each RC shall submit a conflict-of-interest policy to the Department of Developmental Services (DDS) by July 1, 2011, and shall post the policy on its Internet Web site by August 1, 2011. The policy shall do, or comply with, all of the following:

1. Be consistent with applicable law.
2. Define conflicts of interest.
3. Identify positions within the regional center required to complete and file a conflict-of-interest statement.
4. Facilitate disclosure of information to identify conflicts of interest.
5. Require candidates for nomination, election, or appointment to a RC board, and applicants for RC director to disclose any potential or present conflicts of interest prior to being appointed, elected, or confirmed for hire by the RC or RC governing board.
6. Require the RC and its governing board to regularly and consistently monitor and enforce compliance with its conflict-of-interest policy.

B. Conflict of Interest Reporting

Welfare and Institutions Code Section 4626(e-l) sets the process for reporting conflicts of interest. The reporting process is:

1. DDS is responsible for developing a Conflict of Interest Reporting Statement (Statement.)
2. The Statement shall be completed by each RC governing board member and executive director within 30 days of

selection, appointment or election and annually thereafter. A Statement must also be completed upon any change in the status of the board member or executive director that creates a potential or present conflict of interest.

3. DDS and the appropriate RC governing board shall review the Statements of each board member and the executive director to ensure that no conflicts of interest exist; however, if a present or potential conflict of interest is identified for a board member or executive director that cannot be eliminated, the RC governing board shall submit to DDS and the Council, a copy of the Statement and a plan that proposes mitigation measures within 30 days (including timeframes and actions that the governing board or individual will take to mitigate the conflict of interest.)

The submission of this Statement and mitigation plan is not considered a request for waiver.

C. Conflict of Interest Criteria

California law outlines the criteria by which DDS evaluates conflicts arising among RC board members.

Additionally, it is expected that board members will be free from conflicts of interest that could adversely influence their judgment, objectivity or loyalty to the RC, its consumers or its mission.

Pursuant to Welfare and Institutions Code section 4626(b), no member of the governing board or member of the program policy committee of a RC shall be any of the following:

2. An employee of DDS or any State or local agency that provides service to a RC consumer, if employed in a capacity which includes administrative or policymaking responsibility, or responsibility for the regulation of the RC.
3. An employee or member of the Council or area board,
4. With the exception of a consumer advisory committee member, an employee or member of the governing board of any entity from which the RC purchases consumer services.
5. Any person who has a financial interest in RC operations, except as a consumer of RC services.

Title 17 provides additional conflict of interest criteria which may or may not encompass the criteria set forth in statute. In accordance with 17 CCR 54520, the following constitute conflicts of interest for RC board members:

6. When a member of the board or their family member is: a) a director, officer, owner, partner, shareholder, trustee or employee of any business entity or provider, b) holds any position of management in any business entity or provider or, 3) has decision or policymaking authority in such an entity or provider.
7. When the advisory committee board member is an employee or member of the governing board of a provider from which the RC purchases client services and engages in the fiscal matters. If so, this member is prohibited from serving as an officer of the RC governing board and from voting on fiscal matters or issues.
8. When a governing board member is any individual described in WIC 4626.

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE MISSOURI PLANNING COUNCIL FOR DEVELOPMENTAL DISABILITIES
AND
THE MISSOURI DIVISION OF DEVELOPMENTAL DISABILITIES
DEPARTMENT OF MENTAL HEALTH**

1. BACKGROUND AND PURPOSE

The Missouri Planning Council for Developmental Disabilities (hereafter referred to as the Council) is established consistent with the federal Developmental Disabilities Assistance and Bill of Rights Act as amended (PL 106-402, hereafter referred to as the DD Act), and by Executive Order. Consistent with the DD Act, the Governor of Missouri has designated the Division of Developmental Disabilities within the Department of Mental Health (hereafter referred to as DDD DMH) as the designated state agency to provide fiscal and administrative support services to the Council as authorized by the DD Act [Sec.125 (d)(1)]. The purpose of this memorandum is to clarify the responsibilities of the designated state agency and the responsibilities of the Council as authorized by the DD Act. [Sec. 125(d)(3)(G)]

1.1 The Council for Developmental Disabilities

The Council is established through federal law to engage in advocacy, capacity building and systemic change activities that contribute to a coordinated, consumer and family-centered, consumer and family-directed, comprehensive system of community services, individualized supports and other forms of assistance to individuals with disabilities. [Sec. 125(a)]

1.2 The Designated State Agency: DDD, DMH

The designated State agency is appointed by the Governor to provide administrative support services to the Council. The Division of Developmental Disabilities within the Department of Mental Health is the designated State agency and adheres to the criteria in the DD Act that such agency shall not interfere with the advocacy, capacity building, and systemic change activities, budget, personnel, State plan development or plan implementation of the Council. [Sec.124(c)(5)(L)]

2. STATEMENT OF AGREEMENT

2.1 GENERAL RESPONSIBILITIES

2.11 The Council for Developmental Disabilities

A. Advocacy, Capacity Building and Systemic Change Activities

The Council is the state entity responsible for carrying out all activities specified in PL 106-402, and shall conduct or support programs, projects, and activities

that carry out the purpose of the DD Act, including advocacy, capacity building and systemic change activities. [Sec.125(c)(2)]

B. State Plan Development, Implementation and Monitoring

The Council shall submit to the Secretary of the Administration on Developmental Disabilities the State plan required under the DD Act. The Council is responsible for development, implementation; and monitoring of the State plan. [Sec.125(c)(3) and (4)]

C. Reports

The Council shall develop and submit all required reports on Council activities, grants and contracts. [Sec.125(c)(7)]

D. Review of Designated State Agency

As required by the DD Act, the Council shall periodically review the designated State agency with respect to the activities carried out under the DD Act and make any recommendations for change to the Governor. [Sec.125(c)(6)]

E. Timeliness

The Council shall perform all responsibilities in a timely manner that meets the requirements of the Administration on Developmental Disabilities and/or the DSA.

2.12 The Designated State Agency: DDD DMH

A. Administrative Support Services

DDD DMH as the designated State agency, is responsible for providing required assurances and administrative support services as requested by and negotiated with the Council. [Sec. 125 (d)(1) and 125(d)(3)(A)]

B. Records, Access and Financial Reports

DDD DMH shall ensure that access to records and such records are kept as the Secretary of the Administration on Developmental Disabilities and the Council determine necessary, and shall provide timely financial reports at the request of the Council regarding the status of expenditures, obligations, liquidation, and the Federal and non-Federal share described in the DD Act. [Sec.125 (d)(3)(D)]

C. Communication

DDD DMH shall ensure that all administrative communications and instructions from State fiscal and administrative offices, are routed directly to the Council.

D. Requests for Information

DDD DMH shall route all requests for information or reports concerning the Council's activities, budget and contracts directly to the Council. DDD DMH

will not develop and submit information and reports requested by the State or General Assembly without the Council's knowledge and approval.

E. Assurances

DDD DMH shall assist the Council in obtaining the required assurances and in ensuring that the Council's fiscal and administrative processes are conducted in a manner consistent with State law [Sec.125 (d)(3)(F)]. (Assurances are delineated in Appendix A.)

F. Memorandum of Understanding

DDD DMH, at the request of the Council, is responsible for entering into a memorandum of understanding with the Council delineating the roles and responsibilities of the designated State agency [Sec.125 (d)(3)(G)]

G. Timeliness

DDD DMH, will provide these services and respond to requests in a timely manner.

2.2 BUDGET, FISCAL, ACCOUNTING, AND CONTRACT ADMINISTRATION

2.21 The Council for Developmental Disabilities

- A. The Council shall prepare, approve, and implement a budget using amounts paid to the State under the DD Act to fund and implement all programs, projects, and activities. The Council will develop and forward budget information on State budget forms to DDD DMH for inclusion in the State budget process. [Sec.125(c)(8)]
- B. The Council shall direct the expenditure of funds for grants, contracts, interagency agreements that are binding contracts, and other activities consistent with federal and State administrative procedures. [Sec.125(c)(8)(C)]
- C. The Council shall develop the Council contract model, conduct all contract preparation, oversee processing of Council contracts and maintain a tracking system for all Council contract information, consistent with requirements of the State Finance and Administration contract office.
- D. The Council shall complete, track and approve all invoices and reimbursement requests, including corresponding match, for Council funds.
- E. The Council shall develop and submit all Council budgetary requests through DDD DMH in accordance with State Office of Administration procedures and DMH Administration Division procedures.
- F. The Council shall submit all necessary budget, fiscal, accounting and contract documents to DD DMH in a timely manner.

2.22 The Designated State Agency: DDD DMH

- A. DDD DMH shall route communications and information concerning State budget, fiscal and contract procedures to the Council.

- B. **DDD DMH shall assist the Council by processing budget, fiscal and contract transactions.**
- C. DDD DMH shall forward the State budget forms, along with instructions, to the Council when available. DDD DMH will incorporate or ensure that the Council budget information is incorporated in the submission of budget information to the State Office of Administration, Governor's Office, and/or General Assembly.
- D. **DDD DMH shall process Council contracts.**
- E. DDD DMH shall process or ensure processing of all Council-approved reimbursement requests.
- F. DDD DMH shall track or ensure tracking of matching funds on Council-approved reimbursement requests for federal reports.
- G. DDD DMH shall process or ensure processing of the federal draw, receive, account for, and disperse funds on behalf of the Council. [Sec. 124(d)(3)(B)(i)]. [Sec.125(c)(3)(C)(i)]
- H. DDD DMH shall prepare or ensure the preparation of the federal ADD-02B expenditure report for the Council's review and approval.
- F. DDD DMH shall provide or ensure the provision of such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of, and accounting for, funds paid to the State under the DD Act [Sec.125(c)(3)(C)(i)].
- G. DDD DMH shall provide or ensure provision of cost centers, accounts, encumbrances and reports on costs and other support documentation for Council budget preparation and for other Council fiscal management needs.
- H. DDD DMH shall provide budget, contract, reimbursement and accounting services in a timely manner.

2.3 PERSONNEL ADMINISTRATION

2.31 The Council for Developmental Disabilities

- A. The Council shall develop its personnel requests consistent with State Office of Administration, Division of Personnel and Merit System regulations and procedures. Council recruitment and hiring of staff shall be consistent with Federal and State nondiscrimination laws. Dismissal of personnel shall be consistent with State law and personnel policies.
- B. The Council, through the Chair and Executive Committee, is responsible, consistent with State regulations, for recruiting and hiring an Executive Director of the Council, and supervising and annually evaluating the Executive Director.
- C. The Council Executive Director is responsible for developing personnel requests for Council staff positions, hiring, supervising, and annually evaluating the staff of the Council in accordance with State Office of Administration, Division of Personnel requirements [Sec.125(c)(9)].
- D. The Council staff, while working for the Council, are responsible solely for assisting the Council in carrying out its duties under the DD Act and shall not be

assigned other duties by DDD DMH or any other agency or office of the State [Sec.125(c)(10)].

- E. The Council shall complete all personnel functions in a timely manner.

2.32 The Designated State Agency: DDD DMH

- A. DDD DMH shall route communications and information concerning State personnel procedures to the Council.
- B. DDD DMH shall assist the Council by processing personnel actions in accordance with State Merit System regulations and State Office of Administration, Division of Personnel procedures.
- C. DDD DMH shall ensure that records regarding Council personnel, insurance information, benefits tracking, and longevity are maintained.
- D. DDD DMH shall perform payroll functions for the Council, processing payroll deductions and transactions.
- E. The DDD DMH shall complete all personnel functions in a timely manner.

2.4 GENERAL ADMINISTRATIVE SUPPORT

2.41 The Council for Developmental Disabilities

- A. The Council shall follow State policies and procedures for purchase of supplies and equipment.
- B. The Council shall approve and submit Council travel reimbursement requests.
- C. The Council shall develop the Council equipment plan according to its needs.
- D. The Council shall purchase independent information technology services and support according to its needs.
- E. The Council shall design and maintain the Council website separate from the DDD and state.
- F. The Council shall request data and/or other information as needed to complete the state plan and state and federal reports or carry out its work.
- G. The Council shall complete all general administrative functions in a timely manner.

2.42 The Designated State Agency: DDD DMH

- A. DDD DMH shall route communications and information concerning State purchasing procedures to the Council.
- B. DDD DMH shall process requests for purchase of equipment and supplies deemed necessary by the Council for the operation of its office.
- C. DDD DMH shall process travel authorizations and reimbursement requests for the Council.
- D. DDD DMH shall provide or ensure the provision of VPN access to the state information technology system for purposes of completing staff performance

reviews in accordance with Office of Administration, Division of Personnel regulations.

- E. DDD DMH shall provide or ensure the provision of data requests and information requests necessary for the Council to complete its state plan, state and federal reports, or other reports necessary to carry out its work.
- F. DDD DMH shall provide or ensure the provision of general services including mail routing and delivery, courier services, etc. for the Council.
- G. DDD DMH shall complete all general administrative functions in a timely manner.

2.5 LEGAL ASSISTANCE

2.51 The Council on Developmental Disabilities

The Council shall request consultation with legal staff through the DMH General Counsel or Missouri Attorney General's Office, or purchase private legal counsel as needed.

2.52 The Designated State Agency: DDD DMH

- A. DDD DMH shall allow the Council to seek legal assistance when appropriate from the DMH General Counsel, State Attorney General's Office or purchase private legal counsel as determined necessary by the Council's Executive Committee.

3. TERMINATION OR AMENDMENT OF THE MEMORANDUM OF UNDERSTANDING

This memorandum shall become effective upon the signature of all parties and may be modified or terminated with a thirty-day notice and with written agreement by all parties.

Bernard Simons
Director
Division of Developmental Disabilities

Date

Stephanie Briscoe
Chairperson
Missouri Planning Council for Developmental Disabilities

Date

Susan Pritchard-Green
Executive Director
Missouri Planning Council for Developmental Disabilities

Date

Memorandum of Understanding

Texas Council for Developmental Disabilities and The Texas Education Agency

I. PURPOSE

This Memorandum of Understanding ("MOU") is entered into between the Texas Council for Developmental Disabilities, 6201 East Oltorf, Suite 600., Austin, Texas, hereafter referred to as the "TCDD," and the Texas Education Agency, 1701 North Congress Ave., Austin, Texas, hereafter referred to as the "TEA". The TCDD is established pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act as amended (42 USC 15001), hereafter referred to as the "DD Act", and by state statute at Chapter 112, Title 7, Texas Human Resources Code, hereafter referred to as the "State Act." Consistent with the DD Act, the Governor of Texas has designated TEA as the "designated state agency" to receive, account for and disburse funds available to TCDD and to provide administrative support to TCDD as appropriate. The purpose of this MOU is to identify the responsibilities of TEA as the designated state agency and the responsibilities of TCDD consistent with the DD Act and the State Act.

II. GENERAL AGREEMENTS

The State Act establishes the TCDD as a separate entity under state law, and delegates authority to the TCDD for all programmatic activities conducted with funds available to the TCDD. The State Act also establishes the Executive Director of the TCDD as the executive head of agency for the TCDD. TEA is responsible as the Designated State Agency to provide the services and support as indicated in this Memorandum of Understanding.

TCDD staff will be subject to the administrative rules and policies of the State of Texas and of its cognizant federal authorities. Pursuant to the State Act, the TCDD is responsible for selecting and hiring the Executive Director, when that position becomes vacant, and supervising the Executive Director consistent with state personnel policies and procedures of the TCDD. The TCDD Chair will prepare an annual performance evaluation of the TCDD Executive Director and serve as the "supervisor's supervisor" when required by state law or regulations.

The parties agree that TCDD staff will be responsible solely for TCDD activities and responsibilities and will not be assigned other duties nor guided in implementing activities by the TEA. It is TCDD's intent to be responsive to the limitations of TEA set forth in state law and regulation related to personnel decisions. In like manner, it is TEA's intent to be responsive to the intent of the DD Act that provides for the Council to determine the numbers and types of staff necessary to carryout TCDD responsibilities and activities. At any time that the Council determines the need to increase the number of TCDD staff positions above 18 currently authorized FTE's, TCDD and TEA shall jointly determine the procedure and timing for that increase to occur. Unless otherwise separately agreed by TCDD, those positions are available only to the TCDD and are not subject to staffing reductions of the TEA.

TCDD will work cooperatively with TEA to establish procedures for the processing of TCDD grants, contracts and personnel actions, recognizing that state and federal law vest fiscal, personnel, and rulemaking authority in the Council concerning activities carried out with funds available to TCDD. Federal law establishes that the TEA, and any other agency, office, or entity of the State, will not interfere with the advocacy, capacity building, and systemic change activities, budget, personnel, State plan development, or plan implementation of the Council.

TEA will provide administrative support services to the TCDD as detailed in this MOU. The provision of these services are subject to TEA's then-current operating procedures and systems. Nothing in this MOU obligates TEA to provide or purchase for TCDD any administrative service or support not regularly available or provided by TEA. Any requests by TCDD for modification to TEA services or support shall be subject to negotiation at the time of the request and to additional reimbursement as allowed by the DD Act. TCDD agrees to cooperate with TEA in providing any information needed by TEA to carry out its duties.

III. FINANCIAL, BUDGETING AND ACCOUNTING SERVICES

TEA has the following responsibilities and duties in state and federal law:

- A. Receive, account for and disburse funds on behalf of TCDD in accordance with the state and federal law and as authorized by TCDD staff, provided that TEA shall not encumber any funds available to TCDD, transfer any funds between TCDD budget categories or from TCDD to any other entity, or otherwise initiate charges or expenses against funds available to TCDD without specific authorization in advance by TCDD.
- B. Provide the fiscal controls and fund accounting procedures necessary for proper disbursement of and accounting for TCDD funds.
- C. Prepare required state and federal financial reports regarding TCDD funds, including TCDD review prior to submittal.
- D. Provide payroll services consistent with state and federal requirements.
- E. Provide timely financial information to TCDD to allow for the preparation of required fiscal reports to state and federal authorities.
- F. Provide or assist TCDD in securing the non-federal share of the cost of projects as required by federal law.
- G. Support TCDD in developing required state budget, strategic plan, performance measures, and appropriations request materials and related items (and other state reporting).

IV. HUMAN RESOURCES

TEA agrees to provide the following Human Resources services to TCDD:

- A. For state payroll and benefits purposes, administratively maintain TCDD employees as TEA employees.
- B. TEA agrees to provide recruitment, posting and processing of applications for TCDD positions.
- C. TEA will ensure compliance with EEO and ADA related matters and will act as the TCDD Executive Director's designee to implement a program of equal opportunity employment for the TCDD as required by the Texas Commission on Human Rights and state law.
- D. Other HR services as appropriate.

V. OTHER ADMINISTRATIVE SERVICES

TEA agrees to provide the following administrative services to the TCDD unless TEA and TCDD jointly agree for TCDD to contract for such services separately:

- A. Provide appropriate assurances for the TCDD State Plan and consult with TCDD to maintain consistency of the State Plan with state law.

- B. Information technology support for TCDD shall be provided through TEA interagency agreements with the Department of Information Resources and the state Data Center Service including desktop and laptop computers, printers, networking, server and infrastructure, E-mail accounts, network connection (including LAN equipment and data circuits), and related hardware and software. TEA support shall be provided in a manner that assures separate identity for TCDD computer functions including website (www.txdcc.state.tx.us) and email (e.g. Roger.Webb@tcdd.state.tx.us).
- C. Purchasing and procurement services that will enable TCDD to procure and receive goods and services consistent with state requirements and upon its own authority, including support and assistance concerning lease space for TCDD offices.
- D. Training and consultation to designated TCDD personnel for contract processing and development as appropriate.
- E. Bulk mail services directly or through contract with another state agency.

VI. OTHER UNDERSTANDINGS

- A. TEA understands that TCDD shall develop and authorize funding activities to implement goals and objectives in the approved TCDD State Plan within the limitations of available funds and applicable state and federal regulations. TCDD shall manage all aspects of the application, review, and approval processes for grants and contracts and shall provide ongoing project development and grants management oversight to funded projects. DD funded grant projects shall abide by all terms of the grant award and with all applicable federal and state requirements including the Uniform Grant Management Standards (UGMS) developed by the Governor's Office of Budget, Planning and Policy, and federal rules promulgated by the Office of Management and Budget (OMB) where applicable. Except as otherwise stated in this agreement, TCDD is solely responsible for the grant selection, award, and management activities of the Council. The TCDD Executive Director or his designee is the authorized signatory for all TCDD grants and contracts.
- B. TCDD, as a separate state entity under law, will comply with State of Texas administrative rules and policies applicable to State agencies of similar size regarding the provision of internal audit services. It is understood by the parties that TCDD currently contracts separately for Internal Audit Services to ensure compliance with State requirements. Should TCDD determine not to continue to separately acquire such services, it promptly will notify TEA and the parties will mutually agree on the provision of such services by or through TEA, as may be necessary.
- C. TCDD will provide updated designations of TCDD personnel with approval authority for various TCDD financial and personnel actions, which personnel shall correspond, as closely as possible, with the equivalent positions and authority of TEA employees.

VII. COMPENSATION FOR ADMINISTRATIVE SERVICES

TCDD agrees to reimburse TEA for the administrative services provided under this MOU consistent with provisions of the DD Act. TCDD will reimburse TEA not more than \$50,000 each fiscal year for basic services of accounting, budget, purchasing and HR services provided that TEA provides at least an equal share from non-federal resources as state match through the application of the indirect cost rate. Information technology support (as noted in Section V.B.) and all other services provided to TCDD by TEA will be reimbursed by TCDD to the extent allowed by state and federal law. TEA will provide TCDD documentation of the cost and allocation method for those services.

VIII. GENERAL PROVISIONS

Dispute Resolution: Disputes concerning implementation of this MOU between TCDD and TEA must first be resolved at the staff level if possible. If either party determines that the dispute cannot be resolved at the executive staff level, TCDD and TEA agree to pursue resolution through the use of mediation pursuant to the Government Dispute Resolution Act, Chapter 2009 of the Texas Government Code as applicable.

X. TERM OF AGREEMENT

This MOU shall commence on September 1, 2009 and shall terminate on August 31, 2010. This MOU will be reviewed annually by the parties and will be renewed for additional (1) year periods to commence at the beginning of each fiscal year. This MOU may be expanded, modified, or amended at any time upon the mutual written agreement of TCDD and TEA.

This agreement may be terminated by mutual agreement of both parties. Either party may terminate the agreement by giving the other party written notice of its intent to terminate. Written notice may be sent by any written method which provides verification of receipt, and the 30 days will be calculated from the date of receipt. Such actions, however, do not alone affect the status of the Governor's designation of TEA as the TCDD designated state agency pursuant to provisions of the DD Act. In the event any provision of this agreement becomes unenforceable or void, such will not invalidate any other provision of this agreement.

THE UNDERSIGNED PARTICIPATING PARTIES do hereby certify that (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the effected agencies of State Government, (2) the proposed arrangements serve the interest of efficient and economical administration of the State Government, and (3) the services, supplies, or materials in this MOU are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under Contract given to the lowest responsible bidder.

TCDD further certifies that it has the authority to receive the above services by authority granted in: Executive Order RP-37.

TEA further certifies that it has authority to perform the above services by authority granted in: Executive Order RP-37.

Texas Council for Developmental Disabilities

Texas Education Agency

By: _____
Brenda Coleman-Beattie
TCDD Chair

By: _____
Shirley Beaulieu,
Associate Commissioner for Finance and
Operations/CFO (Acting)

Date: _____

Date: _____

Memorandum of Understanding

Between

Arkansas Health Services Permit Agency

And

Arkansas Governor's Developmental Disabilities Council

I. PURPOSE AND BACKGROUND

The purpose of this Memorandum of Understanding is to formalize the working relationship between the Arkansas Health Services Permit Agency (the "DSA") and the Arkansas Governor's Developmental Disabilities Council (hereafter referred to as the "DDC") and to outline their respective roles and responsibilities in implementing the Developmental Disabilities Act as amended (PL 106-402, hereafter referred to as the DD Act) and the Governor's Executive Order.

The DDC is established with the federal Developmental Disabilities Assistance and Bill of Rights Act, as amended, and by the Governor's Executive Order, both such documents incorporated herein by reference. Consistent with the DD Act, the Governor of Arkansas has designated the DSA as the state agency to provide fiscal and administrative support services to the DDC as authorized by the DD Act [Sec.125 (d)(1)]. The purpose of this memorandum is to clarify the responsibilities of the designated state agency and the responsibilities of the DDC as authorized by the DD Act. [Sec. 125 (d) (3)(G)]

The Developmental Disabilities Council is established through federal law to engage in advocacy, capacity building and systemic change activities that contribute to a coordinated, consumer and family-centered, consumer and family-directed, comprehensive system of community services, individualized supports and other forms of assistance to individuals with disabilities. [Sec. 125 (a)]

The Designated State Agency is appointed by the Governor to provide administrative support services to the DDC. The Health Services Permit Agency is the Designated State Agency and adheres to the criteria in the DD Act that such agency shall not interfere with the advocacy, capacity building, and systemic change activities, budget, personnel, State plan development or plan implementation of the Council. [Sec.124(c)(5)(L)]

II. ROLES AND RESPONSIBILITIES

A. General

Section 15021 of Title 42 of the U.S. Code specifies: “The purpose of this part is to provide for allotments to support State Councils on Developmental Disabilities in each State to —

(1) engage in advocacy, capacity building, and systemic change activities that are consistent with the purpose described in section 15001(b) of this title and the policy described in section 15001(c) of this title; and

(2) contribute to a coordinated, consumer- and family-centered, consumer- and family-directed, comprehensive system of community services, individualized supports, and other forms of assistance that enable individuals with developmental disabilities to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life.”

B. State Plan

1. DDC Responsibilities with respect to State Plan

The DDC shall submit to the Secretary of Health and Human Services the State plan required under the DD Act. The DDC is responsible for development, implementation, and monitoring of the State plan. [Sec.125(c)(3) and (4)]

The State Plan is an advocacy blueprint, indicating the priority areas of the DDC and the kinds of activities it will conduct to help move the state forward in its capacity to facilitate the independence, productivity and full community integration of all Arkansans with developmental disabilities.

The DDC shall have the authority and responsibility to implement the the DDC’s State Plan within legislatively approved guidelines. Resource utilization for implementation may include hiring staff, contracting for specific services and issuing grants. The DSA shall make a written copy of policies with respect to hiring staff, contracting for specific services and issuing grants available to the DDC on an annual basis. The DDC and the DSA will jointly develop written procedures for the development, execution, and fiscal management of contracts and grants.

The DDC will comply with state law with respect to that public notices and contract language.

Authority and responsibility to approve contracts, monitor and evaluate contractor performance, and authorize payments and a payment schedule to contractors is given to the DDC Director and must be in compliance with state rules and regulations governing contracts and payments. Transmittal of the DDC's State Plan and Plan Amendments shall be signed by the DDC Chairperson, DSA Director, and the DDC Executive Director unless otherwise specified by the Administration on Developmental Disabilities.

A copy of the plan must be made available to the DSA at least 10 business days prior to a request for signature and subsequent revised copies made available within ten (10) days after federal approval.

The DDC shall also:

Serve as a forum through which issues regarding current and potential programs and policies concerning persons with developmental disabilities may be discussed by consumer, public, professional and lay interests. Utilize such input in development of the State Plan.

Advise the private sector, the executive and, as requested, the legislative branches of state government on programs and policies which affect persons with developmental disabilities and their families, and the Administration on Developmental Disabilities, concerning the activities of the DDC and the progress being made within the state to enhance the quality of living experienced by people with developmental disabilities.

Review and comment, to the extent feasible on other state agency plans, roles and policies which affect people with developmental disabilities.

Issue RFPs, grants and contracts related to innovations and best practices in Priority Areas within approved State guidelines and rules.

Collaborate with state agencies, private sector businesses, providers and local communities in system change activities leading to a more flexible, cost effective system of community based services.

Submit annual report to the Governor.

2. DSA Responsibilities with respect to State Plan

DSA shall comply with the DD Act, including without limitation:

Assist the DDC by processing budget, fiscal and contract transactions. The DSA, through the Arkansas Dept. of Finance and Administration ("DFA") will process DDC contracts.

Receive, deposit, and disburse DDC approved expenditures in accordance with the DDC's approved State Plan and with applicable state and federal laws and generally accepted accounting procedures. Review in a timely fashion all DDC contracts, notices and grants after DDC approval & signature by DSA Director to insure that any payables, grants, contracts and invoices are in compliance with the State and Federal policies and procedures.

Provide to the DDC on an annual basis all forms used by the DSA for fiscal, contracting and personnel matters.

Once compliance is assured, DSA will complete the paperwork for disbursement of federal funds.

III. HUMAN RESOURCES/ PERSONNEL ADMINISTRATION

A. Employees

1. General

DDC staff members are employees of the State, and therefore are covered by all applicable State and DSA personnel rules and affirmative action requirements, inasmuch as these roles comply with the DD Act, Section 124.

2. Hiring

To select the DDC's Executive Director, the DDC shall, consistent with State law, recruit and hire a DDC Director. The DSA Director will review the recruitment and hiring process adopted by the DDC to ensure it is consistent with State law. The DDC Director is the hiring authority for all other DDC staff. State and Agency Personnel policies and the DDC's approved staffing pattern shall govern the exercise of this hiring authority. On an annual basis, the DSA will provide to the DDC a copy of the DSA's hiring policies.

B. DDC

The DDC, through the Chair and Executive Committee, is responsible, consistent with State regulations, for recruiting and hiring the Executive Director of

the DDC, and supervising and annually evaluating the Executive Director on forms used by the DSA.

The DDC Executive Director is responsible for developing personnel requests for DDC staff positions, hiring, supervising, and annually evaluating the staff of the DDC in accordance with State and Agency regulations on forms used by the DSA.

C. Supervision

The DDC's Executive Committee shall hire and evaluate, on an annual basis, the activities of the DDC Director. The DDC Executive Committee shall conduct the annual performance review of the DDC Director on forms used by the DSA.

All other DDC staff will be supervised by the DDC Director. Staff work assignments will be made by the DDC Director based on the policy directions set by the DDC.

The DDC Chair shall be the signature authority for the DDC on forms and documents related to the supervision of the DDC Executive Director. The DDC staff, while working for the DDC, is responsible solely for assisting the DDC in carrying out its duties under the DD Act and shall not be assigned other duties by DSA or any other agency or office of the State [Sec.125(c)(10)].

D. Job Training

DDC Staff is responsible for training of all DD staff. The DSA will provide all new DDC staff with an orientation of DSA policies and procedures.

E. The DSA

The DSA shall assist the DDC by processing personnel actions in accordance with the State Office of Personnel Management procedures.

IV. ADMINISTRATIVE AND FISCAL SERVICES

A. Budget Development

It shall be the responsibility of the DDC to develop a federal fiscal year budget for DDC operations, planning, and priority area activities consistent with its federally approved State Plan. This budget shall be in compliance with State rules and regulations.

Biennially, the DDC, the DSA Director and Fiscal Manager shall jointly prepare a state biennial budget on behalf of the DDC, in a format necessary for submission to DFA and inclusion in the Governor's proposed budget to the Legislature. The DDC Director and DDC Chairman shall be informed of the schedule of legislative budget hearings during which the DDC budget may be addressed.

B. Accounting Services

The DDC is responsible for implementing its state and federally approved budget. The DDC Director will have final approval authority for expenditures and payments that follow applicable state and federal guidelines.

The DDC agrees to charge against the Developmental Disabilities formula grant only those expenses approved for payment by the DDC or the DDC Director.

The DSA shall provide such fiscal monitoring and fund accounting procedures as may be necessary to assure the proper disbursement of, and accounting for, funds paid to the State under the DD Act [Sec.125(c)(3)(C)(i)]

The DSA shall provide cost centers, accounts, encumbrances and reports on costs and other support documentation for DDC budget preparation and for other DDC fiscal management needs.

The DSA will provide accounting services that include payroll, payments against contracts, operating expenses, and other DDC approved bills.

C. Fiscal Services

The DSA will be responsible for coding all items for input and assuring that billings are in compliance and are timely submitted.

The DSA will prepare and transmit to the DDC Director and DDC Chair expenditure and funds obligation reports by the tenth (10th) day of each month in a mutually agreed upon format. Such reports shall reflect each award year, and shall include without limitation current month expenditures, award year to date expenditures and remaining balances.

The DSA will prepare and timely submit the quarterly fiscal reports required by the Administration on Developmental Disabilities (ADD).

D. Administrative Match

Administration includes: the cost of the fiscal management, and accounting for the receipt and disbursement of funds, 2) the costs of preparing fiscal reports for the DDC, the federal government, and the State, 3) the costs of processing and fiscal management of contracted services, and 4) other costs of administering DDC operations such as payroll.

Funds from the DDC to the DSA shall be available to pay up to fifty percent (50%) of the expenditures found to be necessary for the proper and efficient exercise of the functions of the DSA. .

Priority Area activities is 25% state funds and 75% federal funds. The 25% funds can come from any non-federal source, including in-kind.

The DDC shall document and maintain records on the type and amount of matching funds required by federal regulation. Documentation of matching funds derived through performance contracts shall be the responsibility of the DDC. Documentation format shall be negotiated between DDC and the DSA.

Other sources for cash match and in-kind match shall be jointly documented by DDC and DSA.

E. Shared Services

The DDC will be responsible for the cost of rent for provision of office space, IT and telephone support on a pro-rata basis.

The DDC and the DSA shall each be responsible, on a pro-rata basis for the certain administrative costs, including without limitation lease and maintainance of a copy machine, costs for a postage meter machine and the purchase of expendable office supplies.

IV. GENERAL ADMINISTRATIVE SUPPORT

A. The DDC

The DDC shall follow State policies and procedures for purchase of supplies and equipment, contracts and other services.

The DDC shall annually review its equipment inventory against the DSA inventory listing to assure the updating of additions and deletions. Such review will take place no later than fifteen (15) days from the date such inventory is received from DSA.

B. Other Support Services

The DSA agrees to provide or arrange for other support services to the DDC to the same extent as provided to the DSA. Such other services shall include access to legal advice and consultation for which the DDC shall pay the usual charges for such services.

V. TERM OF AGREEMENT

This agreement is effective upon signature and remains in effect until rescinded or amended as agreed upon by both parties below or by their successors.

DDC Chair: _____

Date _____

DDC Executive Director:

Date: _____

Agency Director (DSA) _____

Date: _____



MEMORANDUM

DATE: November 21, 2013

TO: Roberta Newton, Interim Executive Director

FROM: Stephanie L. Schiele, Labor Relations Counsel 

SUBJECT: *Compensation for Facilitators for Council Members*

ISSUES

- I. What options are available to the State Council on Developmental Disabilities to ensure qualifying council members' receive the services of a facilitator?
- II. Does the State Council on Developmental Disabilities create a joint employment relationship by exercising any of these options?

BRIEF ANSWERS

- I. The State Council on Developmental Disabilities can reimburse council members' expense claims for services rendered by privately hired facilitators. The Council could also hire state civil service employees to serve as facilitators for the council members. Due to the availability of state civil service employees capable of performing the duties of a facilitator, it is highly unlikely that the State Council on Developmental Disabilities can contract the facilitator services to an outside employment agency.
- II. A joint relationship is not created by reimbursing the members of the State Council on Developmental Disabilities for the actual expense of a facilitator. If the Council hires state civil service employees to serve as facilitators for the council members, a direct employment relationship will exist.

BACKGROUND

The State Council on Developmental Disabilities (Council) is established by state (Lanterman Act at Welfare and Institutions Code, section 4520 et. seq.) and federal law (Developmental Disabilities and Bill of Rights Act) to ensure that individuals with developmental disabilities and their families

*Governor Edmund G. Brown, Jr. // Secretary, Government Operations Agency Marybel Batjer
Director Julie Chapman // Chief Deputy Director Howard Schwartz
1515 S Street, North Building, Suite 400, Sacramento CA 95811 // www.calhr.ca.gov*

participate in the planning, design, and receipt of the services and supports they need, which in turn promotes increased independence, productivity, inclusion, and self-determination. (What is the State Council on Developmental Disabilities [State Council on Developmental Disabilities Disabilities] at <<http://www.sccd.ca.gov/aboutus.htm>> [as of Nov. 18, 2013].) The Council is comprised of 31 members appointed by the Governor, including individuals with disabilities, their families, federally funded partners, and state agencies. (*Ibid.*) Some of the council members may have certain limitations requiring the assistance of a facilitator to help complete their duties as a council member. A number of these facilitators may already be privately employed by the council member to assist in day-to-day living activities. While the council member attends Council meetings, and performs other duties as a council member, the facilitator continues with this assistance. These facilitators are not currently employees of the State of California. The Council requested this legal opinion to explore its available options to compensate facilitators for their work.

ANALYSIS

I. Compensation for Facilitators for Council Members

There are several options available to the Council to ensure qualifying council members receive the services of a facilitator. First, the Council can reimburse council members' expense claims for services rendered by the facilitators privately hired by the council members. Second, the Council could hire facilitators to assist the council members. Third, the Council could contract with an employment agency to provide facilitators to assist the council members. Prior to conducting an in-depth analysis of these options, it is necessary to determine if the Council must make these services available to its council members.

a. Council's Obligation to Make the Facilitator Services Available

The Council may be obligated to provide facilitators to assist council members perform their duties. If a council member has a disability that limits a major life activity that requires an accommodation to complete his or her job duties, the Council has a duty to accommodate the employee, if possible. (Gov. Code, § 12900 et seq.) One way to accommodate a disabled employee is to provide the employee with an interpreter or reader. (Gov. Code, § 12926, subd. (o); 2 Cal. Code. Regs., § 7293.9, subd. (a).) Thus, a reasonable accommodation can include providing work-related personal assistance to help an employee with a disability perform the job functions. Therefore, the Council has an obligation to provide assistance for council members who need assistance for work related job functions. The types of assistance can include but are not limited to: readers, scribes, interpreters, job assistants, job coaches, and drivers depending on the job duties and needs of the employee. (Gov. Code, § 12926; Accommodation and Compliance Series: Personal Assistance Services (WPAS) in the Workplace (2013) at <<http://askjan.org/media/PAS.html>>.) Therefore, it may be necessary for the Council to provide council members with facilitators to assist them in completing their job duties.

Although the Council may have an obligation to provide facilitators to assist council members in completing their job duties, this obligation does not extend to providing assistance for council

necessary expenses incurred in connection with the performance of their duties under this division.

If the council members are paying for the cost of these facilitators, then as discussed above, it is a necessary expense for the council members. Since the council members must be reimbursed for their actual and necessary expenses, the council members should be reimbursed for the actual cost of services provided by the facilitators. Thus, one option to compensate facilitators is to reimburse council members' expense claims for services provided during Council meetings by their privately hired facilitator.

d. The Council Can Hire State Civil Service Employees

As another option, the Council could hire civil service employees to work as facilitators for the council members. The Department of Human Resources is charged with maintaining employee classifications for the state. (Gov. Code, § 18502.) According to the Personnel Management Division of the Department of Human Resources, there are two Support Service Analyst classifications that could serve as facilitators for the council members. The majority of positions in both Support Service Analyst classifications are Permanent Intermittent positions. This means that individuals hired will work on an "on-call" basis for up to a maximum of 1,500 hours per year.

First, the Support Services Assistant (General) classification provides reasonable accommodation to the known physical limitations of state employees for completion of their work tasks. (Attachment A, Classification Specifications.) The typical tasks of a Support Services Assistant (General) include performing support services for the disabled, such as reading, filing, driving, setting up special equipment, and transportation of employees in their work setting. (*Ibid.*) The duties of a Support Services Assistant can include: performing reading services; serving as a messenger; transporting and accompanying staff members to places of business where services are otherwise unavailable; performing simple clerical services; and performing other job related support work. (Attachment A.)

The second classification that could serve as facilitators for the council members is the Support Services Assistant (Interpreter) classification. A Support Services Assistant (Interpreter) provides a wide range of interpreting services for Rehabilitation Counselors for the Deaf or other deaf or hard of hearing staff members. (Attachment B, Classification Specifications.) The interpreter facilitates communication between individuals with hearing impairments and hearing persons, by serving as an interpreter using American Sign Language and spoke language. The Support Services Assistant (Interpreter) classification performs interpreting services individually or in group settings, including hearings for an audience at an assembly or meeting for consumers who are not State Employees. (*Ibid.*)

The Council could hire either Support Services Assistants (General) or Support Services Assistants (Interpreter) as facilitators for the council members. Both of these positions could be permanent intermittent positions, which mean the employee can work up to 1,500 hours per year. There is no statute, regulation, or case law that requires an employer to allow an employee the choice of a

particular individual to assist them in the performance of their job duties. Thus, there is no authority to support the assertion council members must be permitted to use the services of a private facilitator hired to assist in day-to-day activities outside of the council members' duties.

e. Contract with an Employment Agency

The Council could also contract with an employment agency for facilitators to assist the council members. In exercising this option, the contract would have to comply with the contract requirements set forth by the Government Code. First, the contract must result in a cost savings for the state. (Gov. Code, § 19130.) Thus, in order to contract for facilitators, it must cost less than reimbursing the council members for the cost of the facilitators. If it is more cost effective to contract with an employment agency to provide facilitators for council members, then this contracting requirement is met.

Second, the contract must not cause a displacement of civil service employees. (*Ibid.*) Since the facilitators are not currently state employees, contracting for facilitators will not cause the displacement of any state employees. Thus, this contracting requirement is met.

Third, the contract must not adversely affect the State's affirmative action efforts. (*Ibid.*) Thus, the contract for facilitators must not harm the State's affirmative action efforts. As long as the contract does not harm the State's affirmative action efforts, this contracting requirement is met.

Fourth, the contract must be awarded through a publicized competitive bidding process. (*Ibid.*) The Department of General Services has set forth requirements for the bidding process for contracts, depending on the type of contract and the dollar amount of the contract. Provided the Council complies with the competitive bidding requirements for the contract with the employment agency, this contracting requirement is met.

Finally, the contract must be for services that cannot be completed by civil service employees. (*Ibid.*) As previously discussed, the Support Services Assistants (General) and the Support Services Assistants (Interpreter) are civil service classifications available to assist the council members. Because there are state employee classifications that could do the work of the facilitators, the requirements of Government Code section 19130 are not met. Therefore, it is highly likely the Council cannot contract with an employment agency to provide facilitator services for the council members.

Thus, in order to provide facilitators for council members, the Council can either reimburse the council members for the actual expense of their privately hired facilitators or hire state civil service employees to assist the council members with their job duties. The Council cannot contract with an employment agency to provide facilitators for the council members. The Council should be aware of any potential employment relationship created by exercising these options.

II. Employment Relationship for Facilitators for Council Members

The Council is also concerned with whether the facilitators could be considered employees of the Council pursuant to the Fair Labor and Standards Act¹. (29 U.S.C., §201 et seq.) Courts consider a number of factors in order to determine whether an employment relationship exists. Specifically, courts will consider whether the alleged employer: (1) has the power to hire and fire the employees; (2) supervises and controls the employees work schedule or employment conditions; (3) determines the rate and method of payment; and (4) maintains employment records. (*Guerrero v. Superior Court* (2013) 213 Cal.App.4th 912; *Bonnette v. California Health & Welfare Agency* (1983) 704 F2d 1465, 1470.) Whether the Council could be held liable by the facilitators depends on how the facilitator's services are obtained.

a. **Reimbursement of Council Members' Expense Claims Should Not Create an Employment Relationship**

In order to determine if the Council would be an employer of the facilitators, courts would examine if the Council has the right to hire and fire the facilitators. (*Ibid.*) If the council members are employing the facilitators and then seeking reimbursement from the Council for the cost of the facilitators, then the council members have the power to hire and fire the facilitators. As long as the Council did not tell the council members who they could or could not hire, then the Council would not have the power to hire and fire the facilitators. Thus, it is unlikely the Council would be considered a joint employer of the facilitators under this element of the analysis.

Whether the Council determines the facilitators' working conditions will also determine whether the Council is a joint employer of the facilitators. (*Ibid.*) The council members determine their own schedules, and therefore, would determine when they need assistance from the facilitators. The council members would also supervise the facilitators and determine their job duties. The Council would not determine the facilitator's work schedules or employment conditions. Thus, it is unlikely the Council would be considered a joint employer of the facilitators under this element of the analysis.

Whether the Council determines the rate and method of payment for the facilitators will also determine if the Council is a joint employer of the facilitators. (*Ibid.*) If the council members are the ones employing the facilitators, the council members would determine the rate and method of payment for the facilitators. The Council's only involvement is to reimburse the council members for the actual cost of the facilitators. The Council has no role in determining how, or how much, the council members pay the facilitators. Since the Council would not have a role in determining the rate or method of payment, it is unlikely the Council would be considered a joint employer of the facilitators under this element of the analysis.

¹ This legal opinion does not examine whether the Council would be liable for the facilitators under any other law or regulation than the Fair Labor and Standards Act. (29 U.S.C., §201 et seq.)

Finally, whether the Council maintains employment records for the facilitators will determine if the Council is a joint employer of the facilitators. (*Guerrero v. Superior Court, supra*, 213 Cal.App.4th 912; *Bonnette v. California Health & Welfare Agency, supra*, 704 F2d 1465, 1470.) If the council members are the ones employing the facilitators, the Council would not be required to maintain employment records for the facilitators. The Council would retain records of the amount it reimburses the council members for the facilitators. However, the records of the reimbursements are not employment records; they would only be records of the council members' expenses. Thus, since the Council would not maintain employment records for the facilitators, it is unlikely the Council would be considered a joint employer of the facilitators under this element of the analysis.

If the council members hire the facilitators themselves and then seek reimbursement from the Council, the Council should not be considered a joint employer of the facilitators under the Fair Labor and Standards Act.

b. A Contract with an Employment Agency May Create an Employment Relationship

If the Council is permitted to procure a contract with an employment agency to provide facilitators for the council members, depending on the terms of the contract, the Council could be considered a joint employer under the Fair Labor and Standards Act. (29 U.S.C., §201 et seq.) In order to determine if the Council would be a joint employer of the facilitators, courts would examine if the Council has the right to hire and fire the facilitators. (*Guerrero v. Superior Court, supra*, 213 Cal.App.4th 912; *Bonnette v. California Health & Welfare Agency, supra*, 704 F2d 1465, 1470.) If the employment agency maintains the right to hire and fire the facilitators, it is less likely the Council will be considered a joint employer of the facilitators under this element of the analysis. Any contract for these services should maintain the right to hire and fire the facilitators with the employment agency if the Council does not want to be considered a joint employer.

The extent of control the Council exercises over the facilitators' working conditions will also determine whether the Council is the facilitators' joint employer. (*Ibid.*) The more the Council supervises the facilitators, dictates the facilitators' schedule, or controls the employment conditions for the facilitators, the more likely the Council will be considered a joint employer. If the Council does not want to be a joint employer, it should give as much control over the facilitators' schedule and terms of employment to the employment agency as possible. This may not be possible, however, since the council members must exert some control over the facilitators schedule and duties. It is the council members who determine the days and hours when assistance is needed from the facilitators. Additionally, the council members will determine what duties the facilitators need to do each day. The less control the Council retains over the facilitators' terms of employment, the less likely the Council will be considered a joint employer of the facilitators under this element of the analysis. Thus, to decrease the likelihood of creating a joint employment relationship with the facilitators, the Council should relinquish as much control over the facilitators' schedules, duties, and conditions of employment to the employment agency.

Whether the Council determines the rate and method of payment for the facilitators will also determine whether the Council is a joint employer of the facilitators. (*Guerrero v. Superior Court*, *supra*, 213 Cal.App.4th 912; *Bonnette v. California Health & Welfare Agency*, *supra*, 704 F2d 1465, 1470.) If the Council gives the employment agency the right to determine the rate and method of payment for the facilitators, it is less likely the Council will be considered a joint employer. In this regard, the contract with the employment agency should contain the rate the Council would pay the employment agency for the services of the facilitators. However, the contract should also leave it to the employment agency's discretion to determine how much the employment agency is going to pay the facilitators. The contract with the employment agency would likely dictate how often the Council has to pay the employment agency. However, the contract should leave it to the employment agency's discretion to determine how often the employment agency pays the facilitators. The contract should also leave it to the employment agency's discretion to determine the method it will use to pay the facilitators. If the contract requires the Council to pay the facilitators directly, it is more likely the Council will be considered a joint employer of the facilitators. As long as the Council does not determine the rate of pay or the method of payment for the facilitators, it is likely the Council will not be considered a joint employer under this element of the analysis.

Finally, whether the Council maintains employment records for the facilitators will determine if the Council is a joint employer of the facilitators. (*ibid.*) If the Council does not want to be considered a joint employer, it should not maintain employment records for the facilitators. The Council will probably need to track the hours each facilitator works. These records could be considered employment records. However, maintaining one type of record does not necessarily mean the Council would be considered a joint employer of the facilitators. On balance, the employment agency will be the one hiring and paying the facilitators and should be responsible for maintaining the facilitators' official employment records. If the Council wants to decrease the likelihood of creating a joint employment relationship, the contract with the employment agency should require the employment agency to maintain all of the employment records for the facilitators.

The terms of the contract will be given considerable weight in determining whether the Council is a joint employer of the facilitators. If the Council does not want to be considered a joint employer of the facilitators, the Council should give the employment agency the right to hire and fire facilitators, the right to determine the employee's schedule and employment conditions, the right to determine the amount and method of pay for the facilitators, and require the employment agency to maintain the employment records for the facilitators.

c. An Employment Relationship Exists with State Civil Service Employees

If the Council hires employees to serve as facilitators for the council members, the Council will be the employer of the facilitators under the Fair Labor and Standards Act. Here, a direct employment relationship exists with the civil service employees and the Council. The Council exercises extensive control over the employees' terms of and conditions of employment. Thus, the Council will be liable as an employer in any potential claim by the facilitators under the Fair Labor and Standards Act.

First, joint employment relationship is likely not created by reimbursing the council members for the actual expenses of the facilitators. Second, depending on the terms of the contract and the amount of control exercised by the Council, an employment relationship may exist with facilitators providing services through a contracted employment agency. Last, an employment relationship exists if the Council hires civil service employees to serve as facilitators for the council members.

CONCLUSION

In order to provide facilitators for the council members, the Council can allow the council members to use the services of their privately employed facilitators. The council members can then seek reimbursement from the Council for the actual work-related expenses of the facilitators. If the council members directly employ the facilitators, the Council is likely not a joint employer of the facilitators. The Council can also hire Support Service Assistants to serve as facilitators for council members. If the Council hires the Support Service Assistants, they will be in a direct employment relationship and may be held liable for potential claims by the facilitators.

Attachment A

Support Services Assistant (General)

California State Personnel Board Specification

- **Schematic Code:** CM70
- **Class Code:** 1432
- **Established:** 12/13/1978
- **Revised:** 11/18/1981
- **Title Changed:** 11/18/1981

Definition

Under direct supervision, to provide reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled applicant or State employee; perform reading services; serve as a messenger; transport and accompany staff members to places of business where services are otherwise unavailable; perform simple clerical services; and to do other related related work.

Typical Tasks

Performs support services for the disabled, such as reading, filing, driving, setting up special equipment, transportation of employees in their work setting, serving in a resource and research capacity, provide for a "comfortable" work setting (attendant care) and other job related support services as required.

Distinguishing Characteristics

This class is distinguished from other clerical support classifications by the services to be performed. Incumbents in the class of Support Services Assistant (General) are regularly and routinely required to perform reading, driving and/or work related attendant care services for the disabled. This class is not to be used in lieu of other clerical classes which provide assistance to an applicant/employee in an office or unit. Positions in this class will typically be used on a part-time or intermittent basis.

Knowledge and Abilities

Knowledge of: Concerns and special needs of persons with disabilities as related to the community and working environment.

Ability to: Relate well to individuals, representatives or other State agencies and communities; read and write English at a level required for successful job performance.

Special Personal Characteristics

Neatness; willingness to follow directions; ability to read aloud and speak intelligibly. For those positions requiring driving, possession of a valid driver license will be required. Applicants who do not possess this license will be admitted to the examination but must secure the license prior to appointment.

Updated 6/3/2012

Attachment B

Support Services Assistant (Interpreter)

California State Personnel Board Specification

- **Schematic Code:** XH80
- **Class Code:** 9820
- **Established:** 12/13/1978
- **Revised:** 11/18/1981
- **Title Changed:** --

Definition

Under direct supervision to facilitate communication between individuals with hearing impairments and hearing persons, serve as interpreter; accompany staff members to places of business where services are otherwise unavailable; and to do other duties related to assisting the communication process.

Typical Tasks

Performs interpreting services individually or in group settings, including hearings, for an audience, at an assembly or meeting or for consumers who are not State employees; may perform other services unique to hearing impaired persons and other job related services as required.

Distinguishing Characteristics

This class is distinguished from the class of Support Services Assistant (General) by the services to be performed. Incumbents in the class of Support Services Assistant (Interpreter) are regularly and routinely required to perform interpreting services for hearing impaired individuals using sign language and spoken language for hearing persons. Positions in this class will typically be used on a part-time or intermittent basis.

Minimum Qualifications

Special Requirement: Proficiency in facilitating communication between hearing impaired and hearing persons individually and/or in large groups using American sign language and spoken language. and Experience: Equivalent to six months' experience providing interpreting services to hearing impaired persons, or Certificate: Possession of at least one valid certificate issued by the Registry of Interpreters for the Deaf.

Knowledge and Abilities

Knowledge of: Methods of and proficiency in facilitating communication between hearing impaired and hearing persons by sign language and spoken language.

Ability to: Relate well to individuals, representatives or other State agencies and communities; read and write English at a level required for successful job performance.

Special Personal Characteristics

Neatness, willingness to follow directions; sensitivity to the communication process between hearing impaired and hearing persons and the needs of the persons involved in that process; and ability to maintain confidentiality. Some positions may require driving. For those positions, possession of a valid California driver license will be required. Applicants who do not possess this license will be admitted to the examination but must secure the license prior to appointment.

Updated 6/3/2012