

MEMORANDUM OF UNDERSTANDING #147-162-P-N2010  
Lake Tahoe Unified School District - Mass Prophylaxis Dispensing

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THIS AGREEMENT made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and Lake Tahoe Unified School District (hereinafter referred to as "LTUSD");

R E C I T A L S

WHEREAS, COUNTY on behalf of the Health Services Department Public Health Division, has determined that it is necessary to obtain a location(s) to provide mass prophylaxis dispensing (MPD) along with the establishment and operation of a point of distribution (POD) site on public school grounds as part of the County of El Dorado Emergency Operations Plan (PLAN); and

WHEREAS, part of this PLAN requires that COUNTY assume responsibility for locating, setting up, and operating a POD in time of a health emergency; and providing for transportation of staff and the general public in times of a Public Health emergency; and

WHEREAS, LTUSD has represented to COUNTY that it has suitable locations for a POD at one or more of its public school sites, and a sufficient number of personnel to maintain the infrastructure supporting those sites, for the purpose of mass prophylaxis dispensing to the general public; and

WHEREAS, LTUSD has agreed to provide school buses and school bus drivers to facilitate transportation of POD staff and/or the general public during times of a Public Health emergency, as may be required; and

WHEREAS, this PLAN will provide benefits to the health and well-being of people in the County of El Dorado by providing medication and protection from biological threats and/or epidemics; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable Federal, State and local laws; and

WHEREAS, COUNTY has determined that the provision of these services by LTUSD is in the public's best interest, and that these services are more economically and feasibly performed by outside independent entity as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, COUNTY and LTUSD mutually agree as follows:

**Article I. SCOPE OF SERVICES****Section 1.01** LTUSD agrees to:

- (a) Provide site information and emergency point of contact information to ensure the timely flow of information and notification between HSD and LTUSD in the event of a public health emergency.
- (b) Provide a suitable POD location at one or more of its public school sites during times of public health emergency for the purpose of mass prophylaxis dispensing to the general public by the Health Services Department Public Health staff.
- (c) Permit to the extent of LTUSD's ability, upon request by HSD the use of physical facilities within twelve (12) hours of said request, including but not limited to:
  - (i) School buildings; and
  - (ii) Parking areas.
- (d) Permit the use of equipment during the time period requested by HSD for mass clinics, disease prevention and control activities, including but not limited to:
  - (i) Office equipment, including telephones, copy machines, computers, fax machines;
  - (ii) Tables, chairs, desks, cots, wheelchairs;
  - (iii) Refrigerators; and
  - (iv) Transportation by school bus.
- (e) Utilize school supplies and materials as may be required in accordance with LTUSD's Emergency Operations Plan (available upon request).
- (f) Designate the following three points of contact for use during a public health emergency:
  - (i) An **Administrative** point of contact, who will serve as the primary contact, and who should have authority to open any LTUSD facility or building;
  - (ii) A **Facilities** point of contact, who will work with HSD personnel to move tables, chairs, etc.;
  - (iii) A **Security** point of contact, who will work with HSD and local law enforcement in developing security plans.
- (g) Allow potential POD sites to be visited by HSD staff, local law enforcement, and if applicable, the National Guard for the development and maintenance of a site dispensing plan.
- (h) Provide the necessary number of school personnel (as requested by HSD) to staff and maintain the POD site infrastructure.
  - (i) Encourage LTUSD personnel to participate in Distribution Clinic volunteer training.
  - (j) Provide a suitable location for MPD training of COUNTY and LTUSD personnel, as mutually agreed upon.

**Section 1.02** COUNTY agrees to:

- (a) Provide emergency point of contact information to ensure the timely flow of information and notification between HSD and LTUSD in the event of a public health emergency.
- (b) Provide a point of contact to answer questions that LTUSD personnel may have about the arrangements contained within this MOU.
- (c) Assume responsibility of MPD by trained COUNTY personnel as outlined in the COUNTY Mass Prophylaxis Dispensing Plan, available upon request of the Contract Administrator.

- (d) Provide MPD coordination as outlined in the COUNTY's MPD Plan.
- (e) Work to identify available funding for reimbursement to LTUSD for any supplies that may be used by HSD in conducting MPD.
- (f) Coordinate with the Sheriffs Office, South Lake Tahoe Police and volunteers to provide health and security professional triage at the entrance to a POD facility and, to the best of their ability, prevent contagious people from entering that facility.
- (g) Perform any post-event cleanup that may be required using PHD staff.
- (h) Use COUNTY supplies, pharmaceuticals and materials in accordance with the policies and procedures outlined in the COUNTY MPD Plan, attached hereto and incorporated by reference herein.
- (i) Provide storage for, organize, and maintain pharmaceutical and medical materials delivered through the Strategic National Stockpile (SNS) to be used at the dispensing site. Pharmaceutical and medical materials are defined as antibiotics, antidotes, vaccines, medical supplies and equipment, and certain controlled substances which may be used to respond to a chemical, biological, radiological, or explosive act of terrorism or other attack or incident. In addition, medical materials include but are not limited to equipment designated to support deployment and maintenance of pharmaceutical and medical materials, such as specialized cargo containers and portable refrigeration units.
- (j) Provide training for all LTUSD staff that will participate in maintaining the POD site infrastructure and MPD operations.

**Section 1.03 COUNTY and LTUSD agree:**

- (a) The services provided under this MOU shall take effect upon notification from HSD to LTUSD that a public health emergency exists and HSD is required to provide MPD to the community.
- (b) In the event of a Public Health emergency, LTUSD will be considered an "open site" and will dispense medications to the general public as well as to identified staff, patients, contacts, and specific groups as outlined in the HSD MPD plan.
- (c) LTUSD will follow the dispensing directives of HSD during MPD operations.

**Article II. TERM**

This Agreement shall become effective upon final execution by both parties hereto and shall cover the term upon signature through December 31, 2013 unless earlier terminated pursuant to the provisions under Article VI herein.

**Article III. HIPAA Compliance:**

As a condition of this Memorandum of Understanding between COUNTY and LTUSD both parties shall execute that Business Associate Agreement which is attached hereto as Exhibit "A", which is incorporated herein for all intents and purposes.

**Article IV. GENERAL PROVISIONS**

Section 4.01 There shall be no remuneration associated with this Memorandum of Understanding.

Section 4.02 This MOU is not in effect or enforceable until signed by authorized representatives of both parties.

**Article V. CHANGES TO AGREEMENT**

This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

**Article VI. DEFAULT, TERMINATION, AND CANCELLATION**

Section 6.01 Either party hereto may terminate this MOU upon ninety (90) days written notice to the other.

**Article VII. NOTICE TO PARTIES**

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to COUNTY shall be addressed as follows:

COUNTY OF EL DORADO  
HEALTH SERVICES DEPARTMENT  
931 SPRING STREET  
PLACERVILLE, CA 95667  
ATTN: NEDA WEST, DIRECTOR

or to such other location as the COUNTY directs.

Notices to LTUSD shall be addressed as follows:

LAKE TAHOE UNIFIED SCHOOL DISTRICT  
1021 AL TAHOE BOULEVARD  
SOUTH LAKE TAHOE, CA 96150  
ATTN: JAMES R. TARWATER, Ed.D, SUPERINTENDENT

or to such other location as the LTUSD directs.

**Article VIII. INDEMNITY / INSURANCE**

**Section 8.01** LTUSD, by agreeing to designate its public school sites as potential mass prophylaxis dispensing sites without any compensation for its use, is designated as a volunteer of the County of El Dorado. All liability coverage of County of El Dorado facilities under COUNTY's self-insurance program, including but not limited to professional liability, tort liability, and premises liability, are applicable to LTUSD during the use of any of its facilities as a MPD site.

**Section 8.02** In the event that an incident is not covered under Section 8.01, then:

- (a) COUNTY shall be liable for any and all claims, demands, expenses, liabilities, and losses (including reasonable attorney's fees) as a result of incidents or damages to the facility which may arise out of any acts on the part of COUNTY, its employees, agents, or contractors, in connection with the performances of dispensing services provided by HSD. While acting as a POD under the terms of this MOU, property damage to any LTUSD facility shall be identified and reported to the appropriate COUNTY official(s) within thirty (30) days of the dispensing site closing; and
- (b) LTUSD shall be liable for any and all claims, demands, expenses, liabilities, and losses (including reasonable attorney's fees) as a result of incidents or damages to its schools and/or facilities, which may arise out of any acts or failures to act of LTUSD, its employees, agents or contractors, in connection with the performance of the services provided by LTUSD pursuant to this MOU.

**Article IX. ADMINISTRATOR**

The County Officer or employee with responsibility for administering this Agreement is Chris Weston, Public Health Preparedness Manager, or successor.

**Article X. AUTHORIZED SIGNATURES**

The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind said parties to the obligations set forth herein.

**Article XI. PARTIAL INVALIDITY**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

**Article XII. VENUE**

Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

--COUNTY OF EL DORADO--

By: \_\_\_\_\_  
Norma Santiago, Chair  
Board of Supervisors  
"COUNTY"

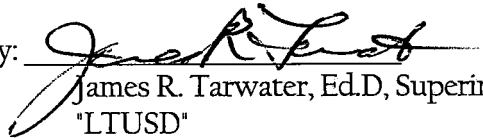
Dated: \_\_\_\_\_

*Attest: Suzanne Allen de Sanchez  
Clerk of the Board of Supervisors*

\_\_\_\_\_  
Deputy

\_\_\_\_\_  
Date

--LAKE TAHOE UNIFIED SCHOOL DISTRICT--

By:  \_\_\_\_\_  
James R. Tarwater, Ed.D, Superintendent  
"LTUSD"

Dated: 8/11/10

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**HIPAA BUSINESS ASSOCIATE AGREEMENT**

This HIPAA Business Associate Agreement is made part of the base contract (“Underlying Agreement”) to which it is attached, as of the date of commencement of the term of the Underlying Agreement (the “Effective Date”).

**RECITALS**

**WHEREAS**, COUNTY and LTUSD entered into the Underlying Agreement pursuant to which LTUSD provides services to COUNTY, and in conjunction with the provision of such services, certain Protected Health Information (“PHI”) and Electronic Protected Health Information (“EPHI”) may be made available to LTUSD for the purposes of carrying out its obligations under the Underlying Agreement; and

**WHEREAS**, the provisions of the Health Insurance Portability and Accountability Act, Pub. L. No. 104-161 of 1996 (“HIPAA”), more specifically the regulations found at Title 45, CFR, Parts 160 - 164 (the “Privacy and Security Rule”), as may be amended from time to time, which are applicable to the protection of any disclosure of PHI pursuant to the Underlying Agreement; and

**WHEREAS**, COUNTY is a Covered Entity, as defined in the Privacy Rule; and

**WHEREAS**, LTUSD, when a recipient of PHI from COUNTY, is a Business Associate as defined in the Privacy Rule; and

**WHEREAS**, “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.202(g); and

**WHEREAS**, the parties agree that any disclosure or use of PHI or EPHI be in compliance with the Privacy and Security Rule or other applicable law;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

- 1) Definitions. Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.
- 2) Scope of Use and Disclosure by LTUSD of COUNTY Disclosed PHI
  - a) LTUSD shall be permitted to use PHI disclosed to it by the COUNTY:
    - i) on behalf of the COUNTY, or to provide services to the COUNTY for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule if done by the COUNTY, or the minimum necessary policies and procedures of the COUNTY



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- ii) as necessary to perform any and all of its obligations under the Underlying Agreement.
  - b) Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or Required by Law, LTUSD may:
    - i) use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
    - ii) disclose the PHI in its possession to a third party for the purpose of LTUSD's proper management and administration or to fulfill any legal responsibilities of LTUSD. LTUSD may disclose PHI as necessary for LTUSD's operations only if:
      - (1) The disclosure is Required by Law; or
      - (2) LTUSD obtains written assurances from any person or organization to which LTUSD will disclose such PHI that the person or organization will:
        - (a) hold such PHI in confidence and use or further disclose it only for the purpose of which LTUSD disclosed it to the third party, or as Required by Law; and,
        - (b) the third party will notify LTUSD of any instances of which it becomes aware in which the confidentiality of the information has been breached.
    - iii) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing COUNTY with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by COUNTY.
    - iv) not disclose PHI disclosed to LTUSD by COUNTY not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by COUNTY.
    - v) de-identify any and all PHI of COUNTY received by LTUSD under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.
  - c) LTUSD agrees that it will neither use nor disclose PHI it receives from COUNTY, or from another business associate of COUNTY, except as permitted or required by this Business Associate Agreement, or as Required by Law, or as otherwise permitted by law.
- 3) Obligations of LTUSD. In connection with its use of PHI disclosed by COUNTY to LTUSD, LTUSD agrees to:
- a) Use or disclose PHI only as permitted or required by this Business Associate Agreement or as Required by Law.
  - b) Use reasonable and appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement.
  - c) To the extent practicable, mitigate any harmful effect that is known to LTUSD of a use or disclosure of PHI by LTUSD in violation of this Business Associate Agreement.
  - d) Report to COUNTY any use or disclosure of PHI not provided for by this Business Associate Agreement of which LTUSD becomes aware.
  - e) Require sub-LTUSDs or agents to whom LTUSD provides PHI to agree to the same restrictions and conditions that apply to LTUSD pursuant to this Business Associate Agreement.

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- f) Use appropriate administrative, technical and physical safeguards to prevent inappropriate use or disclosure of PHI created or received for or from the COUNTY.
  - g) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the COUNTY and to follow generally accepted system security principles as required in final rule 45 CFR Parts 160-164.
  - h) LTUSD will report any security incident of which it becomes aware to the COUNTY. Security incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. This does not include trivial incidents that occur on a daily basis, such as scans or “pings”.
  - i) Obtain and maintain knowledge of the applicable laws and regulations related to HIPAA, as may be amended from time to time.
  - j) May use PHI to report violations of law to appropriate Federal and State Authorities, consistent with § 164.502(j) (1).
- 4) PHI Access, Amendment and Disclosure Accounting. LTUSD agrees to:
- a) Provide access, at the request of COUNTY, within five (5) days, to PHI in a Designated Record Set, to the COUNTY, or to an Individual as directed by the COUNTY.
  - b) To make any amendment(s) to PHI in a Designated Record Set that the COUNTY directs or agrees to at the request of COUNTY or an Individual within sixty (60) days of the request of COUNTY.
  - c) To assist the COUNTY in meeting its disclosure accounting under HIPAA:
    - i) LTUSD agrees to document such disclosures of PHI and information related to such disclosures as would be required for the COUNTY to respond to a request by an Individual for an accounting of disclosures of PHI.
    - ii) LTUSD agrees to provide to COUNTY or an Individual, within sixty (60) days, information collected in accordance with this section to permit the COUNTY to respond to a request by an Individual for an accounting of disclosures of PHI.
    - iii) LTUSD shall have available for the COUNTY the information required by this section for the six (6) years preceding the COUNTY's request for information (except the LTUSD need have no information for disclosures occurring before April 14, 2003).
  - d) Make available to the COUNTY, or to the Secretary of Health and Human Services, LTUSD's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining LTUSD's compliance with the Privacy Rule, subject to any applicable legal restrictions.
  - e) Within thirty (30) days of receiving a written request from COUNTY, make available any and all information necessary for COUNTY to make an accounting of disclosures of COUNTY PHI by LTUSD.
  - f) Within sixty (60) days of receiving a written request from COUNTY, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in LTUSD's possession constitutes a Designated Record Set.
  - g) Not make any disclosure of PHI that COUNTY would be prohibited from making.

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- 5) Obligations of COUNTY.
- a) COUNTY agrees that it will make its best efforts to promptly notify LTUSD in writing of any restrictions on the use and disclosure of PHI agreed to by COUNTY that may affect LTUSD's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
  - b) COUNTY agrees that it will make its best efforts to promptly notify LTUSD in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect LTUSD's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
  - c) COUNTY agrees that it make its best efforts to promptly notify LTUSD in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect LTUSD's use of disclosure of PHI.
  - d) COUNTY shall not request LTUSD to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by COUNTY, except as may be expressly permitted by the Privacy Rule.
  - e) COUNTY will obtain any authorizations necessary for the use or disclosure of PHI, so that LTUSD can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.
- 6) Term and Termination.
- a) Term – this Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the COUNTY to LTUSD, or created or received by LTUSD on behalf of the COUNTY, is destroyed or returned to the COUNTY, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
  - b) Termination for Cause. Upon the COUNTY's knowledge of a material breach by the LTUSD, the COUNTY shall either:
    - i) Provide an opportunity for the LTUSD to cure the breach or end the violation and terminate this Agreement if the LTUSD does not cure the breach or end the violation within the time specified by the COUNTY.
    - ii) Immediately terminate this Agreement if the LTUSD has breached a material term of this Agreement and cure is not possible; or
    - iii) If neither termination nor cures are feasible, the COUNTY shall report the violation to the Secretary.
  - c) Effect of Termination.
    - i) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the LTUSD shall return or destroy all PHI received from the COUNTY, created or received by the LTUSD on behalf of the COUNTY. This provision shall apply to PHI that is in the possession of subLTUSDs or agents of the LTUSD. LTUSD shall retain no copies of the PHI.

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- ii) In the event that the LTUSD determines that returning or destroying the PHI is infeasible, LTUSD shall provide to the COUNTY notification of the conditions that make return or destruction infeasible. Upon {negotiated terms} that return or destruction of PHI is infeasible, LTUSD shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the LTUSD maintains such PHI.

7) HIPAA Business Associate Indemnity

LTUSD shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the COUNTY, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of LTUSD, its officers, employees, subLTUSDs, agents or representatives arising out of or in any way relating to this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever arising from the performance of LTUSD, its officers, agents, employees, subLTUSDs, agents or representatives from this Business Associate Agreement. LTUSD shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards all Agencies, Districts, Special Districts and Departments of the COUNTY, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by LTUSD, LTUSD shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of COUNTY, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes LTUSD's indemnification to COUNTY as set forth herein. LTUSD's obligation to defend, indemnify and hold harmless COUNTY shall be subject to COUNTY having given LTUSD written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at LTUSD's expense, for the defense or settlement thereof. LTUSD's obligation hereunder shall be satisfied when LTUSD has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe LTUSD's obligations to indemnify and hold harmless the COUNTY herein from third party claims arising from the issues of this Business Associate Agreement.

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In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the LTUSD from indemnifying the COUNTY to the fullest extent allowed by law.


In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.

- 8) Amendment – the parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for COUNTY to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
- 9) Survival – the respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
- 10) Regulatory References – a reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- 11) Conflicts - any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit COUNTY to comply with the Privacy Rule, 45 CFR, and HIPAA generally.

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

  
James R. Tarwater, Ed.D., Superintendent  
LTUSD

Signed: \_\_\_\_\_

Norma Santiago, Chair,  
Board of Supervisors  
COUNTY