

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

In re:)
) Docket No. 19-NMFS-0001
Proposed Waiver and Regulations Governing)
the Taking of Eastern North Pacific Gray) RIN: 0648-BI58 and
Whales by the Makah Indian Tribe) RIN: 0648-XG584
)

FIRST DECLARATION OF STEVE STONE

1. I am a Fishery Biologist for the National Marine Fisheries Service (NMFS) within the National Oceanic Atmospheric Administration (NOAA). In that role I have assisted in the agency's process regarding the proposed waiver and regulations captioned above, including the procurement of Administrative Law Judge (ALJ) services as required by agency regulations at 50 CFR 228.

2. Attached as Exhibit 1 is a true and correct copy of the most recent Interagency Agreement entered into by NMFS and the United States Coast Guard whereby NMFS has secured the Coast Guard's ALJ services for the above-captioned matter. The Agreement is set to expire on September 30, 2019 (i.e, the end of fiscal year 2019). Absent a modification extending that end date, NMFS's allocated funds will no longer be available for use past September 30, 2019.

3. Given the temporal proximity of the existing hearing schedule for the above matter to the end date of the Agreement, the potential the ALJ may need additional time to draft

his recommended decision or the parties potential need to file post-hearing briefs, and the potential for schedule changes, NMFS began evaluating the feasibility of modifying the Agreement so that the ALJ services and associated, allocated funds might continue to be available beyond fiscal year 2019.

4. I have determined that any modification to the Agreement would need to be completed prior to the current expiration date of September 30, 2019.

5. On May 30, 2019, I began the process to modify the Agreement. At this time, I expect to be able to modify the Agreement so that the ALJ's services and funds remaining available for use under the Agreement will continue to be available past September 30, 2019.

I declare, under penalty of perjury under the laws of the United States, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Steve Stone

Dated: June 2, 2019

United States Government
Interagency Agreement (IAA) – Agreement Between Federal Agencies
General Terms and Conditions (GT&C) Section

IAA Number WCR-1716 - 0000 - 01
GT&C # Order # Amendment/Mod #

DEPARTMENT AND/OR AGENCY		
1.	Requesting Agency of Products/Services	Servicing Agency Providing Products/Services
	Name National Oceanic and Atmospheric Administration, NMFS	U.S. Coast Guard Office of Administrative Law Judge
	Address 7600 Sand Point Way NE, Bldg #1 Seattle WA 98115	2703 Martin Luther King Jr. Ave S.E., Stop 7000 Washington DC 20593-7000
2. Servicing Agency Agreement Tracking Number (Optional) _____		
3. Assisted Acquisition Agreement Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
4. GT&C Action (Check action being taken) <input type="checkbox"/> New <input checked="" type="checkbox"/> Amendment – Complete only the GT&C blocks being changed and explain the changes being made. - Block 9. Estimated Agreement Amount, \$99,000.00 - Update Attachment A to increase estimated costs to \$99,000.00 <input type="checkbox"/> Cancellation – Provide a brief explanation for the IAA cancellation and complete the effective End Date.		
5. Agreement Period Start Date <u>10-01-2017</u> End Date <u>09-30-2019</u> of IAA or effective cancellation date MM-DD-YYYY MM-DD-YYYY		
6. Recurring Agreement (Check One) A Recurring Agreement will continue, unless a notice to discontinue is received. Yes <input type="checkbox"/> If Yes, is this an: Annual Renewal <input type="checkbox"/> Other Renewal <input type="checkbox"/> State the other renewal period: _____ No <input checked="" type="checkbox"/>		
7. Agreement Type (Check One) <input checked="" type="checkbox"/> Single Order IAA <input type="checkbox"/> Multiple Order IAA		
8. Are Advance Payments Allowed for this IAA (Check One) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes is checked, enter Requesting Agency's Statutory Authority Title and Citation		
Note: Specific advance amounts will be captured on each related Order.		

United States Government
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9. Estimated Agreement Amount (The Servicing Agency completes all information for the estimated agreement amount.)
(Optional for Assisted Acquisitions)

Direct Cost	\$99,000.00
Overhead Fees & Charges	_____
Total Estimated Amount	\$99,000.00

Provide a general explanation of the Overhead Fees & Charges

10. STATUTORY AUTHORITY

a. Requesting Agency's Authority (Check One)

Franchise Fund	Revolving Fund	Working Capital Fund	Economy Act (31 U.S.C. 1535/FAR 17.5)	Other Authority
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Fill in Statutory Authority Title and Citation for Franchise Fund, Revolving Fund, Working Capital Fund, or Other Authority
Transfer Authority: 15 U.S.C. § 1541; Programmatic Authorities: MMPA of 1972 (16 U.S.C. § 1371), 50 C.F.R. § 228

b. Servicing Agency's Authority (Check One)

Franchise Fund	Revolving Fund	Working Capital Fund	Economy Act (31 U.S.C. 1535/FAR 17.5)	Other Authority
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Fill in Statutory Authority Title and Citation for Franchise Fund, Revolving Fund, Working Capital Fund, or Other Authority
Transfer Authority: 15 U.S.C. § 1541; Programmatic Authority: 14 U.S.C. § 141

11. Requesting Agency's Scope (State and/or list attachments that support Requesting Agency's Scope.)

ALJ hearing services and case management functions with respect to an on-the-record formal rulemaking addressing NMFS' waiver of the MMPA prohibition on take and regulations to govern that take pursuant to Section 101(3)(A) and 103 of the MMPA.

See Attachment A to WCR-1716

12. Roles & Responsibilities for the Requesting Agency and Servicing Agency (State and/or list attachments for the roles and responsibilities for the Requesting Agency and the Servicing Agency.)

See Attachment A to WCR-1716

United States Government
Interagency Agreement (IAA) – Agreement Between Federal Agencies
General Terms and Conditions (GT&C) Section

IAA Number WCR-1716 - 0000 - 01
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13. Restrictions (Optional) (State and/or attach unique requirements and/or mission specific restrictions specific to this IAA).

14. Assisted Acquisition Small Business Credit Clause (The Servicing Agency will allocate the socio-economic credit to the Requesting Agency for any contract actions it has executed on behalf of the Requesting Agency.)

15. Disputes: Disputes related to this IAA shall be resolved in accordance with instructions provided in the Treasury Financial Manual (TFM) Volume I, Part 2, Chapter 4700, Appendix 10; Intragovernmental Business Rules.

16. Termination (Insert the number of days that this IAA may be terminated by written notice by either the Requesting or Servicing Agency.)

60

If this agreement is canceled, any implementing contract/order may also be canceled. If the IAA is terminated, the agencies shall agree to the terms of the termination, including costs attributable to each party and the disposition of awarded and pending actions.

If the Servicing Agency incurs costs due to the Requesting Agency's failure to give the requisite notice of its intent to terminate the IAA, the Requesting Agency shall pay any actual costs incurred by the Servicing Agency as a result of the delay in notification, provided such costs are directly attributable to the failure to give notice.

17. Assisted Acquisition Agreements – Requesting Agency's Organizations Authorized To Request Acquisition Assistance for this IAA. (State or attach a list of Requesting Agency's organizations authorized to request acquisition assistance for this IAA.)

18. Assisted Acquisition Agreements – Servicing Agency's Organizations authorized to Provide Acquisition Assistance for this IAA. (State or attach a list of Servicing Agency's organizations authorized to provide acquisition for this IAA.)

19. Requesting Agency Clause(s) (Optional) (State and/or attach any additional Requesting Agency clauses.)

See Attachment A to WCR-1716

**United States Government
Interagency Agreement (IAA) – Agreement Between Federal Agencies
General Terms and Conditions (GT&C) Section**

IAA Number WCR-1716 - 0000 - 01
 GT&C # Order # Amendment/Mod #

20. Servicing Agency Clause(s) (Optional) (State and/or attach any additional Servicing Agency clauses.)

21. Additional Requesting Agency and/or Servicing Agency Attachments (Optional) (State and/or attach any additional Requesting Agency and/or Servicing Agency attachments.)

22. Annual Review of IAA

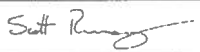
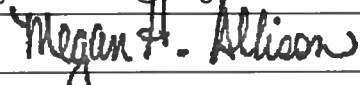
By signing this agreement, the parties agree to annually review the IAA if the agreement period exceeds one year. Appropriate changes will be made by amendment to the GT&C and/or modification to any affected Order(s).

AGENCY OFFICIAL

The Agency Official is the highest level accepting authority or official as designated by the Requesting Agency and Servicing Agency to sign this agreement. Each Agency Official must ensure that the general terms and conditions are properly defined, including the stated statutory authorities, and, that the scope of work can be fulfilled per the agreement.

The Agreement Period Start Date (Block 5) must be the same as or later than the signature dates.

Actual work for this IAA may NOT begin until an Order has been signed by the appropriate individuals, as stated in the Instructions for Blocks 37 and 38.

23.	Requesting Agency	Servicing Agency
Name	Barry A. Thom	Megan H. Allison
Title	Regional Administrator	Director of Judicial Administration
Telephone Number(s)	(503) 231-6266	(202) 372-4440
Fax Number		
Email Address	barry.thom@noaa.gov	megan.h.allison@psc.gov
SIGNATURE	 Digitally signed by RUMSEY SCOTT M. 1365888341 Date: 2018.04.25 14:23:42 -07'00'	
Approval Date		06-28-2018

ATTACHMENT A
WCR-1716

OBJECTIVES

The Department of Commerce does not maintain a pool of Administrative Law Judges (ALJ) to preside over formal rulemakings under the Administrative Procedures Act (U.S.C. §§ 556 & 557). The objective of this Agreement, therefore, is to specify the use of services by U.S. Coast Guard ALJ Office (USCG ALJ) to perform hearing services and case management functions with respect to an on-the-record formal rulemaking addressing the National Marine Fisheries Service's (NMFS) waiver of the Marine Mammal Protection Act (MMPA) prohibition on take and regulations to govern that take pursuant to Sections 101 (3)(A) and 103 of the MMPA. The USCG ALJ shall perform all adjudicatory functions which are required by an ALJ under Chapter 5 of Title 5 with respect to any marine resource conservation law or regulation administered by the Secretary of Commerce acting through NOAA.

ROLES AND RESPONSIBILITIES

- (1) NMFS:
 - a. Forward hearing requests, preliminary pleading and all necessary or associated documents per 50 C.F.R. § 228.4;
 - b. Provide adequate copies of any pertinent laws and regulations needed upon request for the ALJ to conduct the hearing;
 - c. Issue a final decision by the Assistant Administrator for NMFS once the ALJ has made a recommended decision in accordance with 50 C.F.R. § 228.20.

- (2) USCG ALJ:
 - a. Control and conduct the assigned case in accordance with NMFS procedural regulations found at 50 C.F.R. § 228 et seq.;
 - b. Make arrangements for the use of a courtroom to hold the hearing in Seattle, WA.;
 - c. Receive the request for hearing, witness and exhibit lists; associated transmittal memoranda, and other case referral information and documents forwarded by NMFS;
 - d. Enter case information in a database control system and maintain accurate case files and continuously track case status;
 - e. Issue a notice of case assignment identifying the assigned ALJ, orders or notices for pre-hearing conferences and other procedural matters as provided by NMFS regulations;
 - f. Immediately forward the case file to the assigned ALJ for adjudication;
 - g. Distribute and service decisions and all other documents issued by the ALJ as required by NMFS regulations. Copies of pre-trial and other preliminary

decisions issued pursuant to 50 C.F.R. § 228.20 will be sent to NOAA's Office of General Counsel Northwest (GCNW). Copies of the recommended decision (50 C.F.R. § 228.20) will be sent to NOAA's Assistant Administrator, NOAA's Office of General Counsel for Fisheries (GCF) and GCNW;

- h. Close and certify the case record and forward the case file to GCNW or GCF as directed in the event of a petition for review. In the event that no petition for review is filed, then close the record at the conclusion of the applicable time period and forward the case file to GCNW or GCF as directed;
- i. Maintain a closed docket for this case and refer requests by third parties for records or information pertaining to NOAA's Freedom of Information Act Office for processing.

ESTIMATED COSTS

The estimated agreement amount is \$99,000. NMFS anticipates to reimburse USCG ALJ for the actual costs of services including:

- (1) Personnel Costs – Actual costs of a Chief ALJ, ALJ, attorney, law clerk, and administrative support staff (including docket services and approved contractors, if applicable) billed on an hourly basis per USCG Standard Rate Table as evidenced by time sheets;
- (2) Travel Costs – Actual expenses directly relating to the NMFS case as evidenced by travel claims paid;
- (3) Court Reporting and Transcript Costs – As evidenced by invoices that exceed the policies of providing free-of-charge hearing transcripts to involved parties or direct costs for expedited transcripts;
- (4) Administrative Expenses – Actual costs of mail, overnight delivery, and office supplies used in connection with NMFS' case.

ADMINISTRATIVE PROVISIONS

- (1) Nothing herein is intended to conflict with current NMFS and USCG ALJ directives, statutes, or law. If the terms of this agreement are inconsistent with existing directives, statutes, or law, then those portions of the agreement which are determined to be inconsistent shall be invalid, but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect.
- (2) The parties may amend or modify this agreement. Any amendments or modifications must be in writing and signed by both parties prior to the performance of any modification.

**United States Government
Interagency Agreement (IAA) – Agreement Between Federal Agencies
Order Requirements and Funding Information (Order) Section**

IAA Number WCR-1716 - 0001 - _____ Servicing Agency's Agreement
 GT&C # _____ Order # _____ Amendment/Mod # _____ Tracking Number (Optional) _____

PRIMARY ORGANIZATION/OFFICE INFORMATION

24.	Requesting Agency	Servicing Agency
Primary Organization/Office Name	National Oceanic and Atmospheric Administration, NMFS	U.S. Coast Guard, Office of Administrative Law Judge
Responsible Organization/Office Address	7600 Sand Point Way NE, Bldg #1 Seattle WA 98115	2703 Martin Luther King Jr. Ave S.E., Stop 7000 Washington DC 20593-7000

ORDER/REQUIREMENTS INFORMATION

25. Order Action (Check One)

New

Modification (Mod) – List affected Order blocks being changed and explains the changes being made. For Example: for a performance period mod, state new performance period for this Order in Block 27. **Fill out the Funding Modification Summary by Line** (Block 26) if the mod involves adding, deleting or changing **Funding for an Order Line**.

Cancellation – Provide a brief explanation for Order cancellation and fill in the Performance Period End Date for the effective cancellation date.

26. Funding Modification Summary by Line	Line # _____	Line # _____	Line # _____	Total of All Other Lines (attach funding details)	Total
Original Line Funding	\$	\$	\$	\$	\$0.00
Cumulative Funding Changes From Prior Mods [addition (+) or reduction (-)]	\$	\$	\$	\$	\$ 0.00
Funding Change for This Mod	\$	\$	\$	\$	\$ 0.00
TOTAL Modified Obligation	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total Advance Amount (-)	\$	\$	\$	\$	\$ 0.00
Net Modified Amount Due	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

27. Performance Period Start Date when signed End Date 09-30-2019
 For a performance period mod, insert the start and end dates that reflect the new performance period.
 MM-DD-YYYY MM-DD-YYYY

IAA Order

IAA Number WCR-1716 - 0001 - Servicing Agency's Agreement
 GT&C # Order # Amendment/Mod # Tracking Number (Optional)

28. Order Line/Funding Information										Line Number <u> </u>													
Requesting Agency Funding Information										Servicing Agency Funding Information													
ALC		13-14-0001								70-06-0000													
Component TAS Required by 10/1/2014	SP	ATA	AID	BPOA	EPOA	A	MAIN	SUB	SP	ATA	AID	BPOA	E POA	A	MAIN	SUB							
			013	2018	2019		1450	000															
<input type="radio"/> OR Current TAS format										70180610													
BETC		DISB								COLL													
Object Class Code (Optional)																							
BPN		784769085								806754677													
BPN + 4 (Optional)		TPMA: 1450 / TPIN: 1314																					
Additional Accounting Classification/Information (Optional)		NOAA DUNS No.: 784769085 NOAA EIN: 52-0821608 OMB MAX Code: 006-48								USCG ALJ DUNS No.: 806754677 USCG ALJ EIN: 54-6010204 TPMA: 0610 / TPIN: 7006													
Requesting Agency Funding Expiration Date <u>09-30-2019</u> MM-DD-YYYY										Requesting Agency Funding Cancellation Date <u>09-30-2024</u> MM-DD-YYYY													
Trial Type Hearing Services to Conduct Formal Rulemaking																							
Project Number & Title																							
Description of Products and/or Services, including the Bona Fide Need for this Order (State or attach a description of products/services, including the bona fide need for this Order.) NMFS will reimburse USCG ALJ for the actual costs of services rendered. USGC ALJs will perform hearing services and case management functions with respect to an on-the-record formal rulemaking addressing NMFS' waiver of the MMPA prohibition on take and regulations to govern that take pursuant to Sections 101 (3)(A) and 103 of the MMPA. The amount of this obligation is expected to cover the services for one week. NMFS has determined that the services are non-severable because NMFS will not receive a benefit until the hearing is complete.																							
North American Industry Classification System (NAICS) Number (Optional) <u> </u>																							
Breakdown of Reimbursable Line Costs										OR							Breakdown of Assisted Acquisition Line Cost:						
Unit of Measure										Contract Cost		\$											
Quantity		Unit Price		Total				Servicing Fees		\$													
1		\$99,000.00		\$ 99,000.00				Total Obligated Cost		\$ 0.00													
Overhead Fees & Charges				\$				Advance for Line (-)		\$													
Total Line Amount Obligated				\$ 99,000.00				Net Total Cost		\$ 0.00													
Advance Line Amount (-)				\$				Assisted Acquisition Servicing Fees Explanation															
Net Line Amount Due				\$ 99,000.00																			
Type of Service Requirements																							
<input type="checkbox"/> Severable Service <input checked="" type="checkbox"/> Non-severable Service <input type="checkbox"/> Not Applicable																							

IAA Order

IAA Number WCR-1716 - 0001 - _____
GT&C # Order # Amendment/Mod #

Servicing Agency's Agreement
Tracking Number (Optional) _____

29. Advance Information (Complete Block 29 if the Advance Payment for Products/Services was checked "Yes" on the GT&C.)

Total Advance Amount for the Order \$ _____ [All Order Line advance amounts (Block 28) must sum to this total.]

Revenue Recognition Methodology (according to SFFAS 7) (Identify the Revenue Recognition Methodology that will be used to account for the Requesting Agency's expense and the Servicing Agency's revenue)

Straight-line – Provide amount to be accrued \$ _____ and Number of Months _____

Accrual Per Work Completed – Identify the accounting posting period:

Monthly per work completed & invoiced

Other – Explain other regular period (bimonthly, quarterly, etc.) for posting accruals and how the accrual amounts will be communicated if other than billed. _____

30. Total Net Order Amount: \$ 99,000.00

[All Order Line Net Amounts Due for reimbursable agreements and Net Total Costs for Assisted Acquisition Agreements (Block 28) must sum to this total.]

31. Attachments (State or list attachments.)

Key project and/or acquisition milestones (Optional except for Assisted Acquisition Agreements)

Other Attachments (Optional)

WCR-1716 Estimated Costs

BILLING & PAYMENT INFORMATION

32. Payment Method (Check One) [Intra-governmental Payment and Collection (IPAC) is the Preferred Method.]

If IPAC is used, the payment method must agree with the IPAC Trading Partner Agreement (TPA).

Requesting Agency Initiated IPAC Servicing Agency Initiated IPAC

Credit Card Other – Explain other payment method and reasoning _____

33. Billing Frequency (Check One)

[An Invoice must be submitted by the Servicing Agency and accepted by the Requesting Agency BEFORE funds are reimbursed (i.e., via IPAC transaction)]

Monthly Quarterly Other Billing Frequency (include explanation) _____

34. Payment Terms (Check One)

7 days Other Payment Terms (include explanation): _____

IAA Order

IAA Number WCR-1716 - 0001 - _____ Servicing Agency's Agreement
 GT&C # Order # Amendment/Mod # Tracking Number (Optional) _____

35. Funding Clauses/Instructions (Optional) (State and/or list funding clauses/instructions.)


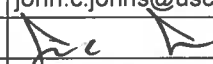
36. Delivery/Shipping Information for Products (Optional)

Agency Name	
Point of Contact (POC) Name & Title	
POC Email Address	
Delivery Address /Room Number	
POC Telephone Number	
Special Shipping Information	

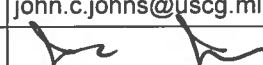
APPROVALS AND CONTACT INFORMATION

37. PROGRAM OFFICIALS

The Program Officials, as identified by the Requesting Agency and Servicing Agency, must ensure that the scope of work is properly defined and can be fulfilled for this Order. The Program Official may or may not be the Contracting Officer depending on each agency's IAA business process.

	Requesting Agency	Servicing Agency
Name	Steve Stone	John C. Johns
Title	Fishery Biologist	Managing Attorney Adviser
Telephone Number	(503) 231-2317	(410) 962-7434
Fax Number		
Email Address	steve.stone@noaa.gov	john.c.johns@uscg.mil
SIGNATURE		
Date Signed	4-24-18	6-28-18

38. FUNDING OFFICIALS - The Funds Approving Officials, as identified by the Requesting Agency and Servicing Agency, certify that the funds are accurately cited and can be properly accounted for per the purposes set forth in the Order. The Requesting Agency Funding Official signs to obligate funds. The Servicing Agency Funding Official signs to start the work, and to bill, collect, and properly account for funds from the Requesting Agency, in accordance with the agreement.

	Requesting Agency	Servicing Agency
Name	Stephanie Coleman	John C. Johns
Title	BP&E Branch Chief	Allowance Fund Control (AFC) Manager
Telephone Number	(503) 231-2337	(410) 962-7434
Fax Number		
Email Address	stephanie.coleman@noaa.gov	john.c.johns@uscg.mil
SIGNATURE	LEVITCH WILLIAM 1105033407 <small>Digitally signed by LEVITCH WILLIAM 1105033407 Date: 2018.04.24 13:23:06 -0700</small>	
Date Signed	W. Levitch, Acting 24Apr2018	6-28-18

IAA Order

IAA Number WCR-1716 - 0001 - _____ Servicing Agency's Agreement
 GT&C # Order # Amendment/Mod # Tracking Number (Optional) _____

CONTACT INFORMATION		
FINANCE OFFICE Points of Contact (POCs)		
The finance office points of contact must ensure that the payment (Requesting Agency), billing (Servicing Agency), and advance/accounting information are accurate and timely for this Order.		
39.	Requesting Agency (Payment Office)	Servicing Agency (Billing Office)
Name	Rachel LaFond	Russell Gibson
Title	Accounting Technician	PO1- Storekeeper
Office Address	20020 Century Blvd., Building CXXI Germantown MD 20874-1143	2703 Martin Luther King Jr., Ave SE, Stop 7000 Washington DC 20593-7000
Telephone Number	(301) 444-2793	(202) 372-4443
Fax Number		
Email Address	rachel.lafond@noaa.gov	russell.d.gibson@uscg.mil
Signature & Date (Optional)		
40. ADDITIONAL Points of Contacts (POCs) (as determined by each Agency)		
This may include CONTRACTING Office Points of Contact (POCs).		
	Requesting Agency	Servicing Agency
Name	Kathryn Schuck	
Title	Budget Analyst	
Office Address	501 W. Ocean Blvd., Suite 4200 Long Beach CA 90802	
Telephone Number	(562) 980-4022	
Fax Number		
Email Address	kathryn.schuck@noaa.gov	
Signature & Date (Optional)		
Name		
Title		
Office Address		
Telephone Number		
Fax Number		
Email Address		
Signature & Date (Optional)		
Name		
Title		
Office Address		
Telephone Number		
Fax Number		
Email Address		
Signature & Date (Optional)		

WCR-1716
Estimated Costs for ALJ Services

	Salaries/Hr	Travel	Total
Judge	\$ 113.00	\$ -	\$ 53,896.48
Attorney	\$ 75.00	\$ -	\$ 35,343.00
Court Reporter	\$ 43.00	\$ 988.52	\$ 9,760.52
			\$ 99,000.00