RESOLUTION - ACTION REQUESTED 2020-229

MEETING: May 5, 2020

TO: The Board of Supervisors

FROM: Janet Chase Williams, County Librarian

RE: Agreement with Cheryl Berg as Literacy Coordinator

RECOMMENDATION AND JUSTIFICATION:
Approve an Agreement with Cheryl Berg as Coordinator of the Mariposa County Literacy Program; and Authorize the Board of Supervisors Chair to Sign the Agreement.

R Janette Gamble is retiring as Coordinator of the Mariposa Literacy Program. The Library is requesting approval to replace her for, the reminder of the current grant (under the same terms, with Cheryl Berg.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board has previously approved new Mariposa County Literacy Coordinators.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
If the position is not filled the Library will be unable to fulfill it's grant obligation to The State of California.

ATTACHMENTS:
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RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Merlin Jones, District II Supervisor
SECONDER: Miles Menetrey, District V Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey
AGREEMENT FOR ADULT LITERACY COORDINATOR

THIS AGREEMENT is made and entered into this 15th day of April, 2020, by and between the County of Mariposa, a political subdivision of the State of California, and Cheryl Berg, pursuant to the following terms and conditions.

WITNESSETH:

1. TERM

The term of this CAO Agreement shall commence on April 15, 2020 and terminate on July 1, 2020 unless extended as provided by this Agreement.

2. SERVICES

Contractor shall perform Adult Literacy Coordinator services as described in Exhibit A, “Scope of Work,” which is attached hereto and incorporated herein by reference. Contractor shall provide all staffing and materials necessary to perform the Scope of Work.

3. COMPENSATION

Contractor shall be compensated for services performed in an amount not to exceed $3,000. The Contractor’s hourly rates are listed in Exhibit B, “Cost Proposal.” The County shall pay Contractor within thirty (30) days of receipt of an approved invoice.

4. HOLD HARMLESS/INDEMNIFICATION

Contractor shall hold harmless, defend and indemnify County and its officers, employees, agents, and volunteers, from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor’s performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of County.

5. INDEPENDENT CONTRACTOR

It is the expressed intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.
6. PUBLIC EMPLOYEES RETIREMENT SYSTEM (CALPERS)

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

7. STATE AND FEDERAL TAXES

As Contractor is not County’s employee, Contractor is responsible for paying all required state and federal taxes. In particular:

a. County will not withhold FICA (Social Security) from Contractor’s payments;
b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;
c. County will not withhold state or federal income tax from payment to Contractor;
d. County will not make disability insurance contributions on behalf of Contractor;
e. County will not obtain workers’ compensation insurance on behalf of Contractor.

8. ASSIGNMENT

It is understood and agreed that this Agreement contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express written consent of the County.

9. NOTICE

Any and all notices, reports or other communications to be given to County or Contractor shall be given to the persons representing the respective parties at the following addresses:

CONTRACTOR:  
Cheryl Berg  
P O Box 67  
Ahwahnee CA 93601

COUNTY:  
Janet Chase-Williams  
County of Mariposa  
P O Box 106  
Mariposa, CA 95338  
Fax: (209) 742-5727

10. COMPLIANCE

Contractor shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Contractor’s performance under this Agreement, including, but not limited to, laws related to prevailing wages. Specifically, Contractor shall not engage in unlawful employment
discrimination, including, but not limited to, discrimination based upon a person’s race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.

11. PUBLIC RECORDS ACT

Contractor is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

12. ENTIRE AGREEMENT AND MODIFICATION

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and Janet Chase-Williams. If there are exhibits attached hereto, and a conflict exists between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

13. ENFORCEABILITY AND SEVERABILITY

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect.

14. TERMINATION AND RIGHTS UPON TERMINATION

A. This Agreement may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity. In the event of the termination of this Agreement, Contractor shall immediately be paid all fees earned as of the effective date of termination.

B. Either party may terminate this Agreement for convenience upon 14 calendar days’ written notice to the other party. Upon termination for convenience, Contractor shall be entitled to compensation for services performed acceptably up to the effective date of termination, as set forth in Exhibit B.

C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at its option, may terminate this Agreement by giving written notification to Contractor. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of County property, dishonesty, or theft.
15. **NO WAIVER**

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

16. **DISPUTES**

Should it become necessary for a party to this Agreement to bring an action in connection with this Agreement, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney’s fees.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Mariposa, State of California.

17. **CAPTIONS**

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

18. **NUMBER AND GENDER**

In this Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word “person” includes corporations, partnerships, firms or associations, wherever the context so requires.

19. **MANDATORY AND PERMISSIVE**

“Shall” is mandatory. “May” is permissive.

20. **SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

21. **COUNTERPARTS**

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

22. **OTHER DOCUMENTS**

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.
23. CONTROLLING LAW

The validity, interpretation and performance of this Agreement shall be controlled by and
construed under the laws of the State of California.

24. AUTHORITY

Each party and each party’s signatory warrant and represent that each has full authority and
capacity to enter into this Agreement in accordance with all requirements of law. The parties
also warrant that any signed amendment or modification to the agreement shall comply with all
requirements of law, including capacity and authority to amend or modify the Agreement.

25. NEGOTIATED AGREEMENT

This Agreement has been arrived at through negotiation between the parties. Neither party is to
be deemed the party which prepared this Agreement within the meaning of California Civil Code
section 1654. Each party represents and warrants that in executing this Agreement it does so
with full knowledge of the rights and duties it may have with respect to the other party. Each
party also warrants and represents that it has received independent legal advice from its attorney
with respect to the matters set forth in this Agreement and the rights and duties arising out of this
Agreement, or that such party willingly foregoes any such consultation.

26. NO RELIANCE ON REPRESENTATIONS

Each party warrants and represents that it is not relying and has not relied upon any
representation or statement made by the other party with respect to the facts involved or its rights
or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to
this Agreement, have been independently verified. Each party further understands that it is
responsible for verifying the representations of law or fact provided by the other party.

27. WARRANTY

County has relied upon the professional ability and training of Contractor as a material
inducement to enter into this Agreement. Contractor hereby warrants that all work shall be
performed in accordance with generally accepted professional practices and standards as well as
the requirements of applicable federal, state and local laws, it being understood that acceptance
of Contractor’s work by County shall not operate as a waiver or release.

28. FUNDING AVAILABILITY

It is mutually agreed that if the County budget of the current fiscal year and/or any subsequent
fiscal years covered under this Agreement does not appropriate sufficient funds for this
Agreement, this Agreement shall terminate and be of no further force and effect upon the day
notice is provided by County to Contractor of such event. Upon termination of this Agreement,
the County shall have no liability to pay any funds whatsoever to Contractor or to furnish any
other considerations under this Agreement except for services rendered prior to such termination
and Contractor shall not be obligated to perform any provisions of this Agreement. Contractor’s
assumption of risk of possible non-appropriation is part of the consideration for this Agreement. County budget decisions are subject to the discretion of the Board of Supervisors.

If funding for any fiscal year is reduced or deleted by the County budget for purposes of this Agreement, the County shall have the option to either cancel this Agreement with no liability occurring to the County, except County must reimburse Contractor for services rendered prior to such reduction or modification of the County budget, or offer an Agreement amendment to Contractor to reflect the reduced amount.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

CAO APPROVAL

COUNTY OF MARIPOSA

[Signature]
Jay D. Kimble
County Administrative Officer

CONTRACTOR

[Signature] 4.15.2020
Cheryl Berg

APPROVED AS TO LEGAL FORM:

[Signature]
Steven W. Dahlem
County Counsel

[Signature]
Kevin Cann
Board Chair

Page 6 of 8
Adult Literacy Co-coordinator

1. Make presentations before community organizations and agencies to generate support, increase interest among potential learners, and recruit tutors and other volunteers;
2. Develop working relationships with program partners;
3. Assist with CLLS and other reports;
4. Assist with the development of a tutor training program;
5. Assist with the selection of curriculum materials;
6. Develop an efficient materials check-out system;
7. Assist with record keeping
8. Assist with other tasks, as needed
Exhibit B

COST PROPOSAL

$25 per hour ................................................ $3,000

To be paid incrementally as invoiced