

AGREEMENT FOR LITERACY SERVICES

This Agreement is made and entered into this 12th day of March, 2019, by and between the County of Humboldt (COUNTY), a political subdivision of the State of California, and the Humboldt Literacy Project (hereinafter, CONTRACTOR) a California not for profit corporation.

RECITALS

WHEREAS, the Humboldt County Library receives grant funding from the California State Library Literacy Services Program (CLLS) pursuant to the California Library Literacy and English Acquisition Service Program (CLLEASP) established by Education Code sections 18880 – 18883 allocating funding to local library jurisdictions to offer services to improve the literacy of Humboldt County residents; and,

WHEREAS, CLLEASP funding is made in two installments each fiscal year comprised of 1) a baseline amount, and 2) a match based on the amount of local funds equal to or greater than the baseline amount expended on Adult & Family Literacy and a per capita amount based on the number of adult learners served, as certified for the previous fiscal year; and,

WHEREAS, CLLEASP requires public libraries, among other things, to develop cooperative relationships with local literacy service providers and participate in existing community adult literacy coalitions, recruit and train volunteers to provide tutoring and other service in public library and other community settings, and meet other program requirements for the preparation of applications, certifications, budgets and reports as more fully set forth in the statute and CLLS Final Reporting Instructions, attached hereto as Attachments A, and B; and,

WHEREAS, CONTRACTOR was established in 1985 to provide literacy and literacy training and materials and services to the citizens of Humboldt County and has partnered with the County Library for many years; and,

WHEREAS, meeting CLLEASP volunteer recruiting and training, program coordination, and budgeting and reporting requirements involves the performance of professional, expert, and technical services of a temporary and occasional character; and

WHEREAS, COUNTY has no employees available to perform such services and is unable to hire employees for the performance thereof for the temporary period; and

WHEREAS, CONTRACTOR offers these services.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. SCOPE OF WORK

CONTRACTOR agrees to abide by the CLLEASP statute, rules, regulations and program requirements and to provide services described in Exhibit C, consisting of one (1) page, which is attached hereto and incorporated by reference. Said exhibit describes the services to be performed by CONTRACTOR under this Agreement.

2. TERM

This Agreement shall commence on July 1, 2017 and continue through June 30, 2020.

3. COMPENSATION

CONTRACTOR agrees that the total maximum compensation cap for services performed and costs incurred under this Agreement is the amount received by the County in grant funding from the State Library CLLEASP in each fiscal year during the term of this Agreement. For Fiscal Year 2017-2018, the amount is 32 Thousand, 600 Hundred 62 Dollars (\$32,662), and each Fiscal Year thereafter during the term of the Agreement, as determined in accordance with the CLLEASP funding formula with respect to matching funds and per capita amount for each Adult Literacy client served. CONTRACTOR agrees to perform any services required by this Agreement for an amount not to exceed such maximum compensation cap. All costs incurred above the maximum compensation cap will be the responsibility of the CONTRACTOR. Under no circumstances shall the maximum compensation cap exceed the amount received from the State Library CLLEASP grant funding.

4. PAYMENT

CONTRACTOR will submit an itemized invoice to the COUNTY monthly or less often, commencing upon final execution of Agreement by COUNTY. CONTRACTOR shall submit a final project report in accordance with CLLEASP requirements for each fiscal year during the term of this Agreement, including all expenditures within thirty (30) days of project completion or within thirty (30) days of termination of this Agreement.

A. CONTRACTOR agrees to coordinate with COUNTY in the performance of this Agreement, timely preparation and maintenance of accurate and complete financial and performance records for a minimum of five (5) years from the date of final payment under this Agreement or until all pending county, state, and federal audits are completed, whichever is later. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work. In addition CONTRACTOR shall maintain detailed payroll records. CONTRACTOR agrees to maintain such records locally and make them available for inspection by county, state and federal representatives, during normal business hours, upon five (5) working days notice.

B. CONTRACTOR will permit county, state and/or federal government to audit all books, accounts or records relating to this Agreement for the purpose of compliance with applicable audit requirements relative to this Agreement. CONTRACTOR shall provide the county, state or federal governments with any relevant information required and shall permit access to its premises, during normal business hours, upon five (5) days notice.

C. In the event of an audit exception or exceptions, the party responsible for not meeting the program requirement or requirements shall be responsible for the deficiency and for the cost of the audit. If CONTRACTOR is the party responsible for the deficiency, the cost of the audit and the deficiency shall be paid by CONTRACTOR within thirty (30) days of notice.

D. CONTRACTOR'S rights and obligations under this provision shall continue after termination of the Agreement.

6. REPORTING:

CONTRACTOR agrees to provide COUNTY with any reports that may be required by county, State or Federal agencies for compliance with this Agreement.

7. MONITORING:

CONTRACTOR agrees to extend to the County Librarian or designees, the right to review and monitor records, programs or procedures, at any time, in regards to clients, as well as the overall operation of CONTRACTOR'S programs in order to ensure compliance with the terms and conditions of this Agreement.

8. RESTRICTIONS, LIMITATIONS OR CONDITIONS

This Agreement is subject to any additional restrictions, limitations, or conditions enacted by the federal and/or state governments that may affect the provisions, terms or funding of this Agreement.

9. INSURANCE

A. This contract/agreement shall not be executed by COUNTY and the CONTRACTOR is not entitled to any rights, unless certificates of insurances, or other sufficient proof that the following provisions have been complied with, and such certificate(s) are filed with the Clerk of the Humboldt County Board of Supervisors.

B. Without limiting CONTRACTOR'S indemnification provided herein, CONTRACTOR shall, and shall require any of its subcontractors to, take out and maintain, throughout the period of this Agreement, the following policies of insurance placed with insurers with a current A.M. Bests rating of no less than A:VII, or its equivalent, against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of CONTRACTOR, its agents, employees or subcontractors:

i. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of One Million Dollars (\$1,000,000) per occurrence for any one incident, including, personal injury, death and property damage. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be twice the required occurrence limit.

ii. Automobile/Motor liability Insurance with a limit of liability of not less than One Million Dollars (\$1,000,000) combined single limit coverage. Such insurance shall include coverage of all "owned", "hired", and "non owned" vehicles or coverage for "any auto".

iii. Workers Compensation and Employers Liability Insurance providing workers' compensation benefits as required by the Labor Code of the State of California. Said policy shall contain or be endorsed to contain a waiver of subrogation against COUNTY, its officers, agents, and employees. In all cases, the above insurance shall include Employers Liability coverage with limits of not less than One Million Dollars (\$1,000,000) per accident for bodily injury and disease.

iv. Insurance Notices:
County of Humboldt
Attn: Risk Management
825 5th Street, Room 112
Eureka, CA 95501

C. Special Insurance Requirements. Said policies shall unless otherwise specified herein be endorsed with, the following provisions:

i. The Comprehensive General Liability Policy shall provide that the COUNTY, its officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by or on behalf of CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to the COUNTY, its officers, officials, employees, and volunteers. Said policy shall also contain a provision stating that such coverage:

- a) Includes contractual liability.
- b) Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to "XCU Hazards".
- c) Is primary insurance as regards to County of Humboldt.
- d) Does not contain a pro-rata, excess only, and/or escape clause.
- e) Contains a cross liability, severability of interest or separation of insureds clause.

ii. The policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY and in accordance with the Notice provisions set forth under Section 22. It is further understood that CONTRACTOR shall not terminate such coverage until it provides COUNTY with proof satisfactory to COUNTY that equal or better insurance has been secured and is in place.

iii. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.

iv. For claims related to this project, the CONTRACTOR'S insurance is primary coverage to the COUNTY, and any insurance or self-insurance programs maintained by the COUNTY are excess to CONTRACTOR'S insurance and will not be called upon to contribute with it.

v. Any failure to comply with reporting or other provisions of the Parties, including breach of warranties, shall not affect coverage provided to COUNTY, its officers, officials, employees, and volunteers.

vi. CONTRACTOR shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement by COUNTY. The endorsements shall be on forms as approved by the COUNTY'S Risk Manager or COUNTY Counsel. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000) shall be disclosed to and approved by COUNTY. If CONTRACTOR does not keep all required policies in full force and effect, COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and CONTRACTOR agrees to pay the cost of said insurance. COUNTY is also hereby authorized with the discretion to deduct the cost thereof from the monies owed to CONTRACTOR under this Agreement.

vii. COUNTY is to be notified immediately if twenty five percent (25%) or more of any required insurance aggregate limit is encumbered and CONTRACTOR shall be required to purchase additional coverage to meet the aggregate limits set forth above.

10. HOLD HARMLESS/INDEMNIFICATION CLAUSE

A. Pursuant to Government Code Section 895.4, each party to this Agreement will indemnify, defend and hold harmless the other party hereto and their officers, agents, and employees, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorney's fees, which arise by the virtue of its own acts or omissions (either directly or through or by its officers, agents or employees) in connection with its duties and obligations under this Agreement and any amendments hereto.

B. County shall indemnify, defend and hold harmless CONTRACTOR and its officers, officials, employees, and volunteers, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorney's fees, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with COUNTY'S duties and obligations under this Agreement and any amendments hereto.

C. Notwithstanding Paragraphs a and b, in the event that CONTRACTOR and COUNTY are both held to be negligently or willfully responsible, CONTRACTOR and COUNTY will bear their proportionate share of liability as determined in any such proceeding. Each side will bear their own costs and attorney fees.

D. Acceptance of insurance required by this Agreement does not relieve CONTRACTOR from liability under this indemnification clause. This indemnification clause will apply to all damages or claims for damages suffered by CONTRACTOR'S operations regardless if any insurance is applicable or not.

11. RELATIONSHIP OF PARTIES

CONTRACTOR shall perform all work and services as described herein as an independent contractor. No person performing any of the work or services described herein shall be considered an officer, agent, servant, or employee of COUNTY, nor shall any such person be entitled to any benefits, including but not limited to Workers' Compensation Benefits, available or granted to employees of COUNTY. CONTRACTOR shall be solely responsible for the acts or omissions of its officers, agents, employees, and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between COUNTY and CONTRACTOR.

12. ASSIGNMENT

Neither party shall assign its obligations under this Agreement without the prior written consent of the other. Any assignment by CONTRACTOR in violation of this provision shall be void, and shall be cause for immediate termination of this Agreement.

13. SUBCONTRACTING

CONTRACTOR shall not subcontract any portion of the work required by this Agreement without prior written approval of COUNTY.

14. LICENSING

CONTRACTOR shall maintain the appropriate licenses throughout the life of this Agreement.

15. TITLE

It is understood that any and all documents, information, and reports concerning this project prepared by and/or submitted by CONTRACTOR shall be the property of COUNTY. CONTRACTOR may retain reproducible copies of drawings and copies of other documents. In the event of termination of this Agreement, for any reason whatsoever, CONTRACTOR shall promptly turn over all information, writing and documents to COUNTY without exception or reservation.

16. NONDISCRIMINATORY EMPLOYMENT

In connection with the execution of this Agreement, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, political affiliation, sex, age or sexual orientation. This policy does not require the employment of unqualified persons. CONTRACTOR further assures that it will abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1974, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, and other applicable federal and state laws to ensure that employment practices are non-discriminatory. CONTRACTOR shall comply with United States Executive Order 11246, entitled "Equal Employment Opportunity." United States Executive Order 11375 and supplemented in 45 CFR, Part 60, amends this. Practices in hiring, compensation, benefits and firing are among the

employment practices subject to this requirement.

17. ENTIRETY OF CONTRACT

This Agreement shall constitute the entire Agreement between the parties relating to the subject matter of this Agreement, and shall supersede any previous agreements, promises, representation, understanding and negotiation, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms which are embodied in this Agreement are hereby ratified.

18. AMENDMENT

No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

19. TERMINATION OR REDUCTION FOR LACK OF FUNDING

COUNTY'S obligations under this Agreement are contingent upon the availability of State funds. In the event such funding is terminated or reduced, COUNTY shall, at its sole discretion, determine whether this Agreement shall be terminated or COUNTY'S maximum obligation reduced. COUNTY shall provide CONTRACTOR seven (7) days written notice of its intent to terminate this Agreement or its intent to reduce its maximum obligation under this Agreement.

20. TERMINATION FOR CAUSE

If, in the opinion of COUNTY, CONTRACTOR fails to perform the services required under this Agreement within the time limits specified herein, or otherwise fails to comply with the terms of this Agreement, or violates any ordinance, regulation, or other law which applies to its performance herein, COUNTY may terminate this Agreement immediately, upon notice. In such event, COUNTY shall pay to CONTRACTOR an equitable portion of the total remuneration as compensation for the portion of the work deemed acceptable by COUNTY, less the amount of any damages sustained by COUNTY as a result of CONTRACTOR'S breach of this Agreement. COUNTY shall be entitled to take possession of all studies, drawings, computations, specifications and reports insofar as they are complete and acceptable to COUNTY.

21. TERMINATION FOR CONVENIENCE

This agreement may be terminated by either party without cause as follows:

A. At any time and for any reason, upon sixty (60) days written notice to COUNTY, CONTRACTOR may terminate this Agreement and receive payment only for those services provided as of the date when termination is effective.

Notice may be given by delivering a copy of said notice to COUNTY personally, or by mailing a copy of said notice to COUNTY. If mailed, notice shall be deemed received two days after deposit in the United States mail, postage prepaid, and addressed as set forth in Paragraph 22, Notices.

B. At any time and for any reason, upon thirty (30) days written notice to CONTRACTOR, COUNTY may terminate this Agreement and pay only for those services rendered as of the date when termination is effective. Notice may be given by delivering a copy of said notice to CONTRACTOR personally, or by mailing a copy of said notice to CONTRACTOR. If mailed, notice shall be deemed received two days after deposit in the United States mail, postage prepaid, and addressed as set forth in Paragraph 23, Notices.

22. NOTICES

Notices shall be given to COUNTY at the following address:

Attn: Humboldt County Librarian
Humboldt County Library
1313 Third Street
Eureka, CA 95501

Notices shall be given to CONTRACTOR at the following address:

Humboldt County Literacy Project
537 G Street
Eureka, CA, 95501

Notice shall be in writing and may be given by delivering a copy of said notice to CONTRACTOR or COUNTY personally, or by mailing a copy of said notice to CONTRACTOR or COUNTY. If mailed, notices shall be deemed received two (2) days after their deposit in the United States mail, postage prepaid and addressed as set forth above.

23. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE

CONTRACTOR certifies by its signature below that CONTRACTOR is not a Nuclear Weapons Contractor, in that CONTRACTOR is not knowingly or intentionally engaged in the research, development, production, or testing of nuclear warheads, nuclear weapon systems, or nuclear weapon components as defined by the Nuclear Free Humboldt County Ordinance. CONTRACTOR agrees to notify COUNTY immediately if it becomes a nuclear weapons contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if CONTRACTOR becomes a nuclear weapons contractor.

24. COMPLIANCE WITH APPLICABLE LAWS

CONTRACTOR shall comply with any and all applicable federal, state and local laws affecting the services covered by this Agreement, including, but not limited to, the Americans with Disabilities Act.

25. STANDARD OF PRACTICE

CONTRACTOR warrants that CONTRACTOR has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. CONTRACTOR'S duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

26. JURISDICTION AND VENUE

This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder or relating to this Agreement shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to Code of Civil Procedure Sections 394 and 395.

27. BINDING EFFECT

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and assigns.

28. SEVERABILITY

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be

severable and shall not in any way impair the enforceability of any other provision of this Agreement.

29. NO WAIVER

The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

In no event shall any payment by COUNTY constitute a waiver of any breach of this Agreement or any default which may then exist on the part of the CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to COUNTY with respect to the breach or default. COUNTY shall have the right to demand of the CONTRACTOR under this Agreement, funds which in the judgment of COUNTY were not expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund any such funds upon demand.

30. INTERPRETATIONS

As both parties jointly prepared this Agreement, the language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

31. ATTORNEYS' FEES

If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this Agreement to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees (including reasonable value of services rendered by County Counsel) to be fixed by the court, and such recovery shall include court costs and attorneys' fees (including reasonable value of services rendered by County Counsel) on appeal, if any. As used herein, the party prevailing means the party who dismisses an action or proceeding in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

32. MEDIA RELEASE


All press releases and informational material related to this Agreement shall receive approval from COUNTY prior to being released to the media (television, radio, newspapers, Internet). In addition, CONTRACTOR shall inform COUNTY of requests for interviews by media related to this Agreement prior to such interviews taking place. COUNTY reserves the right to have a representative present at such interviews. All notices required by this provision shall be given to the Humboldt County Librarian or his designee.

33. REFERENCE TO LAWS AND RULES

In the event any law, regulation, or policy referred to in this Agreement is amended during the term hereof, the parties agree to comply with the amended provision as of the effective date of such amendment.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first herein above written.

COUNTY

BY 
Rex Bohn, Chair
Board of Supervisors
County of Humboldt

CONTRACTOR

BY Shane Mizer

TITLE Board President

DATE 2/27/19


BY EMMA Breacain
Executive Director

TITLE 2/27/19

DATE _____

2 Contractor signatures required

Approved:


Kacy Green, Risk Manager
County of Humboldt