

**AGREEMENT BETWEEN  
COUNTY OF SAN BENITO AND  
HURST BROOKS ESPINOSA, LLC**

THIS AGREEMENT is made and entered into as of this 1st day of January, 2017, by and between the County of San Benito, a political subdivision of the State of California, on behalf of its Health & Human Services Agency (hereinafter, "County") and Hurst Brooks Espinosa, LLC. (hereinafter "Contractor").

**WITNESSETH**

WHEREAS, County is joining together with the counties of Mariposa and Plumas to submit a joint application (hereinafter "Application") for funding from the Department of Health Care Services as part of the Whole Person Care Pilot Program (hereinafter "Program"); and

WHEREAS, County on behalf of itself and the counties of Mariposa and Plumas desires to engage Contractors to consult in the completion and submission of the Application; and

WHEREAS, Contractor has extensive experience and expertise in the completion and submission of applications for funding from the Department of Health Care Services; and

WHEREAS, Contractor represents that they are ready, willing, and able to provide coordinated services to County as hereinafter set forth.

NOW, THEREFORE, County and Contractor mutually agree as follows:

**1. SCOPE OF SERVICES**

County hereby engages Contractor, and Contractor agrees to perform the services described in the scope of services attached as **Exhibit A**.

Contractor verifies they have reviewed the scope of work to be performed under this Agreement and agrees that in their professional judgment, the work can and shall be completed for costs within the maximum amount set forth in this Agreement and during the time allotted.

**2. COMPENSATION**

Payment for services provided as set forth in Exhibit A of this Agreement by Contractor between January 1, 2017, and June 30, 2017, shall be paid in accordance with Section 2 and 3 of this Agreement and Exhibit B. Total payments under this Agreement shall not exceed \$50,000 unless so amended in writing and approved by the County. All funds provided under this Agreement must be completely expended or obligated for expenditure by Contractor by June 30, 2017.

Contractor shall not be entitled to nor receive from County any additional consideration,

compensation, or other remuneration for services rendered under this Agreement.

### **3. METHOD OF PAYMENT**

The method of fee for services rendered shall be as follows:

A. Contractor shall invoice County for amounts equal to the costs incurred for allowable items and at the stated hourly rate, within thirty (30) calendar days following the end of the month in which services were delivered. Invoices shall be submitted to County in a format specified by County and documented in such reasonable detail as the County's Auditor shall require to establish by documentation that the funds were expended for the intended purposes of this Agreement.

B. Upon receipt and approval of the monthly invoice, County shall remit to Contractor the amount of allowable reimbursement costs incurred in the performance of the Agreement. Such remittance shall be made to Contractor within thirty (30) calendar days after timely receipt of Contractor's invoice expenditure and any other required information for each preceding calendar month.

C. Contractor is responsible for the repayment of all audit exceptions resulting from audits performed by County, state or federal agencies directly related to this Agreement up to that maximum amount paid by County to Contractor under this Agreement.

D. Invoices and audits shall be submitted to:  
Attention: HHSA Fiscal Services  
San Benito County Health & Human Services Agency  
1111 San Felipe Rd. #206  
Hollister, Ca. 95023

E. All Contractor charges shall be supported by records that document consulting time and travel time provided by Contractor and any subcontractor, as well as documentation of travel, lodging and ancillary costs, including appropriate original receipts, as set forth in Exhibit B.

F. Contractors shall retain financial, programmatic, client data and other service records for five (5) years from the termination of this Agreement.

### **4. TIME**

Time for performance of this Agreement is of the essence.

### **5. TIME OF PERFORMANCE**

This Agreement shall remain in full force and effect from January 1, 2017 to June 30, 2017.

## **6. MODIFICATION AND TERMINATION WITHOUT CAUSE**

This Agreement may be modified only by a written amendment signed by the parties.

This Agreement may be terminated by County or Contractor, at any time, without cause, upon ten (10) days written notice to the other parties.

Following termination, Contractor shall turn over to County all completed deliverables and then shall be reimbursed for the value of services performed in good faith that are due and unpaid at the time of termination not to exceed the maximum amount payable under this Agreement.

## **7. TERMINATION BY DEFAULT**

If Contractor defaults in their performance, County shall promptly notify Contractor in writing. If Contractor fails to cure a default within five (5) days after notification or if the default requires more than five (5) days to cure and Contractor fails to commence to cure the default within one (1) day after notification, Contractor's failure shall terminate this Agreement.

Alternatively, County may elect to cure the default and any expense incurred shall be payable by Contractor to County.

If this Agreement is terminated because of Contractor default, County shall be entitled to recover from Contractor all damages allowed by law.

## **8. CLOSING OUT**

Contractor is responsible for County's receipt of a final claim for payment by completion of work. County shall promptly pay Contractor's final claim for payment providing Contractor has provided all obligations undertaken pursuant to this Agreement. If Contractor has failed to perform all such outstanding obligations, County shall withhold from Contractor's final claim for payment the amount of such services owed by Contractor.

## **9. WARRANTY**

County relies upon each Contractor's professional ability and training as a material inducement to enter into this Agreement. Contractor warrants they will, at all times utilizing their ability, experience, and talent, faithfully, industriously, and professionally perform to County's reasonable satisfaction. They further warrant they will perform their services in a coordinated fashion according to generally accepted professional practices and standards and the requirements of applicable federal, state, and local laws. County's acceptance of Contractor's work shall not constitute a waiver or release of Contractor from professional responsibility.

Contractor further warrants they possesses current valid appropriate licensure, including, but not limited to, driver's license, professional license, certificate of tax-exempt status, or permits, as may be required to perform the work under this Agreement.

## 10. INSURANCE

### Insurance amounts.

A. Without limiting County's right to obtain indemnification from Contractor or any third parties, prior to commencement of work, Contractor shall purchase and maintain the following types of insurance for minimum limits indicated during the term of this Agreement and provide a Certificate of Endorsement from Contractor's Insurance Carrier guaranteeing such coverage to the County. Such Certificate shall be mailed as set forth under Section 22, Notices. In the event Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

1. Commercial General Liability. \$1,000,000 per occurrence and \$2,000,000 annual aggregate covering bodily injury, personal injury, and property damage. County and its officers, employees, and agents shall be endorsed to above policies as additional insured, using ISO form CG 20 26, or an alternate form that is at least as broad as form CG 20 26, as to any liability arising from the performance of this Agreement.

2. Automobile Liability. Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than Two Hundred Fifty Thousand Dollars (\$250,000) per person, Five Hundred Thousand Dollars (\$500,000) per accident, and for property damages not less than Fifty Thousand Dollars (\$50,000), or such coverage with a combined single limit of Five Hundred Thousand Dollars (\$500,000). Coverage should include owned and non-owned vehicles used in connection with this Agreement.

3. Workers Compensation. Statutory coverage, if and as required according to the California Labor Code, including Employers' Liability limits of \$1,000,000 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against County.

4. Professional Liability. \$1,000,000 limit per occurrence and \$2,000,000 annual aggregate limit covering Contractors' wrongful acts, errors and omissions.

### B. Insurance Conditions.

1. Insurance is to be placed with admitted insurers rated by A.M. Best Co. as A:VII or higher. Lower rated, or approved but not admitted insurers, may be accepted if prior approval is given by County's Risk Manager.

2. Each of the above required policies shall be endorsed to provide County with thirty (30) days prior written notice of cancellation. County is not liable for the payment of premiums or assessments on the policy. No cancellation provisions in the insurance policy shall be construed in derogation of the continuing duty of Contractor to furnish insurance during the term of this Agreement.

## **11. INDEMNIFICATION**

Contractor has the contracted duty (hereinafter, "the duty") to indemnify, defend, and hold harmless, County, its Board of Supervisors, officers, employees, agents, and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract, or otherwise. This duty shall include, but not be limited to, claims for bodily injury, property damage, personal injury, and contractual damages, or as otherwise alleged to be caused to any person or entity including, but not limited to, employees, agents, and officers of each Contractor.

Contractor's liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct, or negligent conduct of any kind, on the part of Contractor, its agents, sub-Contractors, and employees. The duty shall extend to any allegation or claim of liability except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first claim or allegation of liability against County. Contractor will on request and at its expense defend any action suit or proceeding arising hereunder. This clause for indemnification shall be interpreted to the broadest extent permitted by law.

This indemnification specifically includes any claims that may be made against County by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement.

These indemnification obligations shall survive the termination of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

## **12. INDEPENDENT CONTRACTOR**

A. Contractor is an independent Contractor and not an agent, officer, or employee of County. Contractor is subject to the direction and control of County except as to the final result contracted for under this Agreement. County may not require Contractor to change its manner of doing business, but may require redirection of efforts to fulfill this Agreement. Contractor shall have any claim against County for employee rights or benefits including, but not limited to, seniority, vacation time, vacation pay, sick leave, personal time off, overtime, medical, dental, or hospital benefits, retirement benefits, Social Security, disability, Workers' Compensation, unemployment insurance benefits, civil service protection, disability retirement benefits, paid holidays or other paid leaves of absence.

B. Contractor is solely obligated to pay all applicable taxes, deductions, and other obligations including, but not limited to, federal and state income taxes, withholding, Social Security, unemployment, disability insurance, Workers' Compensation and Medicare. Contractors shall each indemnify and hold County harmless from any liability which County

may incur because of Contractor's failure to pay such obligations.

C. Contractor, with full knowledge and understanding of the foregoing, freely, knowingly, willingly, and voluntarily waives the right to assert any claim to any right or benefit or term or condition of employment insofar as they may be related to or arise from compensation paid hereunder.

### **13. COMPLIANCE WITH LAW**

Contractor shall comply with the provisions set forth in **Exhibits C** of this Agreement which are made binding upon the County and shall also be binding upon the Contractor as though made applicable to the Contractor directly. Contractor shall indemnify and hold County harmless from any loss, damage or liability resulting from a violation on the part of Contractor on such rules, regulations, requirements and directives.

### **14. CONFIDENTIALITY**

Contractor shall prevent unauthorized disclosure of any confidential information whether provided by County or the counties of Mariposa and Plumas. Contractor shall not use such confidential information for any purpose other than carrying out Contractor's obligations under this Agreement. Contractor shall promptly transmit to County all requests for disclosure of confidential information.

### **15. CONFLICT OF INTEREST**

Contractor warrants that its employees or their immediate families or Board of Directors or officers, and any subcontractor have no interest and shall not acquire any interest, direct or indirect, which conflicts with the rendering of services under this Agreement. Services rendered by Contractor's associates or employees or subcontractor shall not relieve Contractor from personal responsibility under this clause. Contractor has an affirmative duty to disclose to County in writing the name(s) of any person(s) who have an actual, potential or apparent conflict of interest.

### **16. DRUG FREE WORKPLACE**

Contractor warrants that they are knowledgeable regarding Government Code section 8350 *et seq.* regarding a drug free workplace and shall abide by and implement its statutory requirements.

### **17. INSPECTION**

A. Single Audit Act Clause: Contractor, as a vendor of State and Federal financial assistance, agrees to conduct an annual audit in accordance with the requirements of the Single Audit Act of 1984. Such audit shall be delivered to the County's Auditor-Controller and Health & Human Services Agency for review no later than December 31, 2017.



Failure to perform the requisite audit functions as required by this paragraph may result in County performing any necessary audit tasks or, at County's option, in County contracting with a public accountant to perform the audit, at Contractors' sole expense.

B. Audit Findings/Exceptions/Sanctions. Contractor is responsible for any and all audit findings, exceptions, and sanctions directly related to Contractor's performance under this Agreement, up to the maximum amount paid by County to Contractor under this Agreement. Under no circumstances is the County responsible for these costs relative to this or any other agreement.

## **18. NONDISCRIMINATION**

In rendering services under this Agreement, Contractor and any subcontractor shall comply with all applicable federal, state and local laws, rules and regulations and shall not discriminate based on age, ancestry, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religion, sexual orientation, or any other prohibited basis.

## **19. SUBCONTRACTOR AND ASSIGNMENT**

Services under this Agreement are deemed to be personal services. Contractor may subcontract any portion of services performed under this Agreement to Kemper Consulting Group and provide billings for such services in accordance with the payment terms set forth in Exhibit B. Contractor shall not subconsult with any other subcontractor for any work under this Agreement nor assign this Agreement without the prior written consent of the County, subject to any required state or federal approval.

Assignment by Contractor of any monies due shall not constitute an assignment of the Agreement.

## **20. UNFORESEEN CIRCUMSTANCES**

No party is responsible for any delay caused by natural disaster, war, civil disturbance, labor dispute or other cause beyond the party's reasonable control, provided the affected party or parties give written notice to the other parties of the cause of the delay within two (2) days of the start of the delay.

## **21. OWNERSHIP OF DOCUMENTS**

County shall be the owner of and shall be entitled to possession of any computations, plans, correspondence, or other pertinent data and information gathered by or computed by Contractor prior to termination of this Agreement by County or upon completion of the work pursuant to this Agreement. County's reuse of any such materials on any project other than the project for which they were originally intended shall be at County's sole risk.

No material prepared in connection with the project shall be subject to copyright in the United States or in any other county.

## **22. NOTICE**

All notices shall be given in writing by electronic mail or by personal delivery. Notice is effective as of the date of personal delivery or the e-mail is sent.

### **COUNTY:**

James Rydingsword, Director  
San Benito County H&HSA  
1111 San Felipe Rd. #206  
Hollister, Ca. 95023  
Phone No: (831) 636-4180  
jrydingsword@cosb.us

### **CONTRACTOR:**

Kelly Brooks-Lindsey, Partner  
Hurst Brooks Espinosa, LLC.  
1127 Eleventh St. #805  
Sacramento, CA 95814  
Phone No: (916) 272-0011  
kbl@hbeadvocacy.com

## **23. CHANGES AND AMENDMENTS**

Either party may request changes in the scope of services. Any mutually agreed upon changes, including any increase or decrease in the amount of Contractor's compensation, shall be effective when incorporated in written amendments to this Agreement.

The party requesting the amendment shall submit the request to amend the terms and conditions of this Agreement in writing. Any adjustment to this Agreement shall be effective only upon the parties' mutual agreement in an executed writing. All amendment requests shall be submitted in writing to the County Administrator's Office.

## **24. CHOICE OF LAW**

The parties have executed and delivered this agreement in the County of San Benito, State of California. The laws of the State of California shall govern the validity, enforceability, or interpretation of this Agreement. San Benito County shall be the venue for any action or proceeding, in law or equity that may be brought in connection with this Agreement. Contractors hereby waive any rights they may possess under Section 394 of the Code of Civil Procedure to transfer to a neutral county or other venue any action arising out of this Agreement.

## **25. THIRD PARTY BENEFICIARIES INTENDED**

The counties of Mariposa and Plumas are third party beneficiaries to this Agreement.



**26. SEVERABILITY**

If any of the provisions of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit enforcement of the Agreement as a whole.

**27. WAIVER**

The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a continuing waiver of said breach or waiver of any future breach or violation.

**28. EXHIBITS AND RECITALS**

The Recitals and Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

**29. ENTIRE AGREEMENT; COUNTERPARTS; CONTRIBUTIONS OF ALL PARTIES**

This Agreement, including any exhibits referenced herein, constitutes the entire agreement between the parties and there are no inducements, promises, terms, conditions, or obligations made or entered into by County or Contractor other than those contained herein. 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. This Agreement represents the contributions of both parties, who are each represented by competent counsel, and it is expressly agreed and understood that the rule stated in Civil Code section 1654, that ambiguities in a contract should be construed against the drafter, shall have no application to the construction of the Agreement.

**30. AUTHORITY**

Each signatory to this Agreement represents that it is authorized to enter into this Agreement and to bind the Party to which its signature represents.

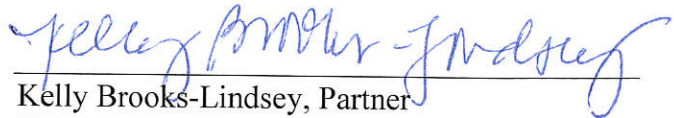
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IN WITNESS WHEREOF the parties have executed this Agreement the day and year first written above.


**COUNTY OF SAN BENITO**

**CONTRACTOR:**

\_\_\_\_\_  
Jaime De La Cruz, Chairman  
San Benito County Board of Supervisors

  
\_\_\_\_\_  
Kelly Brooks-Lindsey, Partner  
Hurst Brooks Espinosa, LLC

\_\_\_\_\_  
**APPROVED AS LEGAL FORM:**  
Matthew Granger, County Counsel

 2-22-17  
\_\_\_\_\_  
Irma Valencia, Deputy County Counsel

Exhibits/Attachments:

**Exhibit A:** Scope of Work

**Exhibit B:** Payment Terms

**Exhibit C:** Assurances of Compliance with County – Non Discrimination

## **EXHIBIT A**

### **Scope of Work**

#### **CONTRACTOR SHALL:**

1. In a coordinated manner, gather information necessary for the completion of the Application from the County and the counties of San Benito, Mariposa, and Plumas.
2. Draft Application ensuring that the narrative of each section of the Application is representative of the needs and associated activities of County and the counties of San Benito, Mariposa, and Plumas.
3. On or before February 22, 2017, complete and e-mail the DRAFT Application to County and the counties of San Benito, Mariposa and Plumas simultaneously for review prior to submittal to the Department of Health Care Services.
4. Receive approval or changes, if any, from County and the counties of San Benito, Mariposa and Plumas. Incorporate changes, if any, and finalize Application for submittal.
5. On or before its due date, submit Application to the Department of Health Care Services.
6. Provide proof of submittal to County and the counties of San Benito, Mariposa and Plumas.

#### **COUNTY SHALL:**

1. Provide contact information for the counties of San Benito, Mariposa and Plumas to Contractors.
2. With all deliberate speed, provide all necessary information to Contractors for the completion of the Application.
3. Promptly review Application as sent by Contractors and provide approval and/or changes.

## **EXHIBIT B**

### **Payment Terms**

County shall pay Contractor in accordance with the following requirements:

1. \$250.00 per hour for Services as described in Exhibit A, with the exception of travel time associated with meetings, site visits or directly related business matters as may be required for the provision of Services. Such travel time shall be paid at \$125.00 per hour.
2. Contractor shall submit monthly invoices for payment in accordance with Sections 2 and 3 of the Agreement.
3. All mileage expenses for travel associated with Services shall be paid at the standard IRS per diem rate.
4. Original receipts for travel costs shall be provided with the monthly billing invoice at the time of monthly billing. Original receipts shall be required for either of the following:
  - a. Lodging (costs at actual cost)
  - b. Meals (not to exceed county per diem rates)
5. Total payments under this Agreement shall not exceed \$50,000.

## EXHIBIT C

### Assurance Of Compliance with the San Benito County Human Services Agency For Nondiscrimination In State and Federally Assisted Programs

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#### ASSURANCE OF COMPLIANCE IN STATE AND FEDERAL ASSISTANCE PROGRAMS.

Contractor agrees that it will comply with Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000d *et seq.*); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 *et seq.*); the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*); the Food Stamp Act of 1977, and in particular section 272.6; (7 U.S.C. § 2012 *et seq.*); Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 *et seq.*); Government Code Section 11135 *et seq.*; California Code of Regulations 22 CCR §§ 98000 - 98413; 24 CCR § 3105a(e); the Dymally-Alatorre Bilingual Services Act (Government Code § 7290 *et seq.*) and other applicable federal and state laws, as well as their implementing regulations. Contractor will ensure that employment practices and provision of services under this Agreement are nondiscriminatory, and that no person shall because of race, color, creed, national origin, ethnic group identification, political affiliation, religion, marital status, sex, sexual orientation, age, or physical or mental disability be excluded from participation in or be denied the benefits of, or be otherwise subject to discrimination. Contractor shall immediately take any measures necessary to effectuate this Agreement.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and the CONTRACTOR HEREBY GIVES ASSURANCE THAT administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Chapter 21, will be prohibited.

BY ACCEPTING THIS ASSURANCE, the Contractor agrees to compile data, maintain records and submit reports as required, to permit effective enforcement of the aforementioned laws, rules and regulations and permit authorized CDSS and/or federal government personnel, during normal working hours, to review such records, books and accounts as needed to ascertain compliance. If there are any violations of this assurance, CDSS shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code § 10605, or Government Code §§ 11135-39, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance.

THIS ASSURANCE is binding on the Contractor directly or through contract, license, or other provider services, as long as it receives federal or state assistance.

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Kelly Brooks-Lindsey, Partner  
Hurst Brooks Espinosa, LLC

