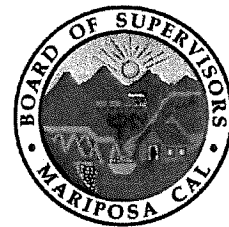




MARIPOSA COUNTY

Health · 209-966-3222



RESOLUTION - ACTION REQUESTED 2016-359

MEETING: July 12, 2016

TO: The Board of Supervisors

FROM: Mary Hodson, CAO

RE: Approve Contract for Services with Burney Stephens

RECOMMENDATION AND JUSTIFICATION:

Approve a Contract for Services with Burney Stephens for the Health Department Dental Hygienist Program in a Not-to-Exceed Amount of \$15,000; and Authorize the Board of Supervisors Chair to Sign the Contract. This contract provides a dental hygienist for the Children's Dental Program, a grant-funded program through First 5 of Mariposa.

It should be noted that the standard Insurance wording was deleted from the Contract, but in coordination with the Human Resources Director/Risk Manager and County Counsel, language regarding a hold harmless in favor of the County and a waiver of claims against the County, will suffice in lieu of the insurance requirement.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board has previously signed the Contract for Services with Resolution # 2015-354 on July 21, 2015, Resolution # 2014-370 on July 22, 2014 and Resolution # 2013-265 on June 25, 2013.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

1. Do not approve the agreement. The Department will need to identify an alternate professional to perform the services.
2. Return the grant funds and discontinue the program.

FINANCIAL IMPACT:

This is a grant funded program. Grant funding and corresponding appropriations are included in the proposed Fiscal Year 2016-2017 Budget.

ATTACHMENTS:

Burney Stephens Contract for Services FY 2016-2017 (PDF)

CAO RECOMMENDATION

Requested Action Recommended


Mary Hodson, CAO 7/6/2016

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]

MOVER: Rosemarie Smallcombe, District I Supervisor

SECONDER: Marshall Long, District III Supervisor

AYES: Smallcombe, Jones, Long, Cann, Carrier

CONTRACT FOR SERVICES

This Contract made this 1st day of July, 2016 between:

COUNTY:

Mariposa County Health Department
Post Office Box 5
Mariposa, CA 95338

and

CONTRACTOR:

Burney Stephens
6330 Jerseydale Road
Mariposa, CA 95338

ARTICLE I. TERM OF CONTRACT

1.01 Contract Term: This Contract shall become effective on July 1, 2016 and shall terminate on June 30, 2017, unless terminated in accordance with the provisions of Article 7 of this Contract.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

2.01 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 Contract 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 Contract.

2.02 Contractor Qualifications: Contractor warrants that Contractor has the necessary experience and technical skills to provide services under this Contract.

2.03 Contract Management: Contractor shall report to Mary Hodson, County Administrative Officer / Interim Health Director (Department Head) who will review the activities and performance of the Contractor and administer this Contract.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

3.01 Scope of Services: Contractor agrees to furnish the following services:
Contractor shall provide the services described in Exhibit "A" attached hereto.

No additional services shall be performed by Contractor unless approved in advance in writing by the County stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with County and the results of the work shall be monitored by the Health Director / Health Officer or his/her designee. However, the means by which the work is accomplished shall be the sole responsibility of the Contractor.

3.02 Method of Performing Services: Contractor will determine the method, details, and means of performing the above-described services including measures to protect the safety of the traveling public and Contractor's employees. County shall not have the right to, and shall not, control the manner or determine the method of accomplishing Contractor's services.

3.03 Employment of Assistants: Contractor may, at the Contractor's own expense, employ such assistants as Contractor deems necessary to perform the services required of Contractor by this Contract. County may not control, direct, or supervise Contractor's assistants or employees in the performance of those services.

Contractor assumes full and sole responsibility for the payment of all compensation and expenses of these assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholdings.

ARTICLE 4. COMPENSATION

4.01 Compensation: In consideration for the services to be performed by Contractor, County agrees to pay Contractor a rate of \$50.00 per hour in proportion to the services satisfactorily performed in the not to exceed amount of \$15,000 (Fifteen Thousand Dollars) or 300 hours for services as described above. The total sum to be paid to Contractor includes all labor, materials, travel and other expenses to be incurred by Contractor in the performance of the services described herein. Payment shall be made upon submission of a formal claim approved by the appropriate official of the County as follows:

Total sum to be paid upon completion of services.

Or

Incremental payments based on the following schedule:
Payments shall be made upon submittal of invoice.

- 4.02** Invoices: Contractor shall submit detailed invoices for all services being rendered from the Contractor to the County.
- 4.03** Date for Payment of Compensation: County will endeavor to make payment within 45 days of invoices being submitted from the Contractor to the County, and approval and acceptance of the work by the County.
- 4.04** Expenses: Contractor shall be responsible for all costs and expenses incident to the performance of services for County, including but not limited to, all costs of materials, equipment, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor and all other of Contractor's costs of doing business. County shall not be responsible for any expense incurred by Contractor in performing services for County.

ARTICLE 5. OBLIGATIONS OF CONTRACTOR

- 5.01** Tools and Instrumentalities: Contractor will supply all tools and instrumentalities required to perform the services under this Contract. Contractor is not required to purchase or rent any tools, equipment or services from County. County shall not provide working space, supplies, materials or other such support to Contractor in the performance of the services and tasks as described herein.
- 5.02** Indemnification: Contractor shall indemnify and hold County harmless from and against any damages, losses, liabilities, expenses, and costs (including reasonable attorney's fees) arising out of the death or bodily injury to any person or destruction or damages to any property, to the extent caused by Contractor's (or by Contractor's assistants, employees, or agents for whom Contractor is legally liable) negligent acts, errors or omissions or willful misconduct in the performance of professional services under this Agreement, and only after such negligence or willful misconduct is established by judgment entered by a court of competent jurisdiction and all appellate remedies are exhausted. Any obligation of Contractor to indemnify County shall not include an obligation to defend any claim while the claim is pending in any manner. Notwithstanding any language to the contrary in Article 5.02, Contractor shall not be required to reimburse County for defense fees and cost including attorney's fees, in proportion to Contractor's proven acts of negligence and further, only to the extent such fees and costs were directly attributable to County's defense of a suit based on Contractor's actual negligence. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by any applicable statute of repose or statute of limitations. Contractor is not obligated to indemnify County for County's own negligence or willful misconduct. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

- 5.03 General Liability and Automobile Insurance:** Deleted.
- 5.04 Certificate of Insurance:** Deleted.
- 5.05 Workers' Compensation:** During the term of this Contract Contractor agrees to provide workers' compensation insurance for Contractor's employees and agents and agrees to hold harmless and indemnify County for any and all claims arising out of any injury, disability, or death of any of Contractor's employees or agents.
- 5.06 Public Employees Retirement System (CalPERS):** In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Contract 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.
- 5.07 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.
- 5.08 Records:** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Contractor relating to the matters covered by this Contract shall be the property of the County, and Contractor hereby agrees to deliver the same to the County upon request. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Contract are prepared specifically for the County and are not necessarily suitable for any future or other use.

5.09 Contractor's Books and Records: Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the County for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the County.

5.10 Assignability of Contract: It is understood and agreed that this Contract 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 Contract will be permitted only with the express written consent of the County.

ARTICLE 6. OBLIGATIONS OF COUNTY

6.01 Cooperation of County: County agrees to comply with all reasonable requests of Contractor and to provide access to all documents as permitted by law necessary to the performance of Contractor's duties under this Contract.

6.02 Assignment: Neither this Contract nor any duties or obligations under this Contract may be assigned by County without the prior written consent of Contractor.

ARTICLE 7. TERMINATION OF CONTRACT

7.01 Termination on Occurrence of Stated Events: This Contract shall terminate automatically on the occurrence of any of the following events:

1. Bankruptcy or insolvency of Contractor;
2. Death of Contractor.

7.02 Termination by County for Default of Contractor: Should Contractor default in the performance of this Contract or materially breach any of its provisions, County, at County's option, may terminate this Contract by giving written notification to Contractor.

7.03 Termination for Convenience of County: County may terminate this Contract at any time by providing a notice in writing to Contractor that the Contract is terminated. Said Contract shall then be deemed terminated and no further work shall be performed by Contractor. If the Contract is so terminated, the Contractor shall be paid for that percentage of the phase of work actually completed, based

on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

7.04 Termination of Funding: The parties acknowledge that the nature of government finance is unpredictable and that the rights and obligations set forth in this Contract are necessarily contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Contract and all obligations of County arising from this Contract shall be immediately discharged. County agrees to inform Contractor no later than thirty (30) calendar days after County determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available.

ARTICLE 8. GENERAL PROVISIONS

8.01 Notices: Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid and return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Contract, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.

8.02 Entire Agreement of the Parties: This Contract supersedes any and all contracts, either oral or written, between the Parties hereto with respect to the rendering of services by Contractor for County and contains all the covenants and contracts between the Parties with respect to the rendering of such services in any manner whatsoever. Each Party to this Contract acknowledges that no representatives, inducements, promises, or contracts, orally or otherwise, have been made by any Party, or anyone acting on behalf of any Party, which are not embodied herein, and that no other contract, statement, or promise not contained in this Contract shall be valid or binding. Any modification of this Contract will be effective only if it is in writing signed by the Party to be charged and approved by the County as provided herein or as otherwise required by law.

- 8.03 Partial Invalidity:** If any provision in this Contract is held by a court or competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 8.04 Attorney's Fees:** If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Contract, the prevailing Party will be entitled to reasonable attorney's fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that Party may be entitled.
- 8.05 Conformance to Applicable Laws:** Contractor shall comply with the standard of care regarding all applicable federal, state and county laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons who work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.
- 8.06 Waiver:** In the event that either County or Contractor shall at any time or times waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Contract, whether of the same or any other covenant, condition or obligation.
- 8.07 Governing Law:** This Contract and all matters relating to it shall be governed by the laws of the State of California and County of Mariposa and any action brought relating to this Contract shall be held exclusively in a state court in the County of Mariposa.
- 8.08 Mediation:** Prior to the initiation of any legal proceedings, the parties to this Agreement agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this Agreement to Non-binding mediation. Such mediation shall be conducted under the auspices of the American Arbitration Association or such other mediation service or mediator upon which the parties agree. The Party seeking to initiate mediation shall do so by submitting a formal, written request to the other party to this Agreement. This section shall survive completion or termination of this Agreement, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceedings to litigate such claim or dispute under the allocable law. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action.

Executed in Mariposa, California, on the date and year first above written.

COUNTY:

County of Mariposa

CONTRACTOR:

Burney Stephens

By:  7-13-16
John Carrier, Chair (date)

By:  6-27-16
(signature) (date)

APPROVED AS TO FORM:



Steven W. Dahlem,
County Counsel

EXHIBIT A

MEMORANDUM OF UNDERSTANDING BETWEEN MARIPOSA COUNTY HEALTH DEPARTMENT AND BURNEY STEPHENS

Whereas Mariposa County Health Department and Burney Stephens, a registered dental hygienist, wish to work collaboratively on a dental program for prevention, screening, and treatment of dental problems for children under the age of six in Mariposa County, the following is agreed:

1. Ms. Stephens agrees to provide the following services:
 - 1) Outreach to community events, health fairs, preschools, daycare groups, churches, and other events where parents or children under the age of six may be active;
 - 2) Provide basic education to those parents willing to participate in the program, including education regarding dental hygiene of small children, use of fluoride, the need for early dental screening, and avoidance of high-risk behaviors for dental carries;
 - 3) Arrange appointments for willing parents and their children to visit the offices of participating dentists and maintain a schedule of these;
 - 4) Keep the Health Officer informed of all activities.
2. Mariposa County Health Department agrees to pay Ms. Stephens the sum of \$50 an hour for all documented time involved with the execution of the above (not to exceed 300 hours).