

COUNTY OF MONTEREY

ORIGINAL

AMENDMENT # 1 to AGREEMENT # 5010-A-13545

KBM-Hogue

THIS AMENDMENT is made and entered into by and between the County of Monterey, a political subdivision of the State of California, (hereinafter, "COUNTY"), and **KBM-Hogue** (hereinafter, "CONTRACTOR").

WHEREAS, This Amendment modifies the agreement for the provision and installation of furniture, chairs and accessories at all office locations occupied by the Department of Social Services between the parties **originally executed on January 24, 2018** (hereinafter, "Original Agreement").

WHEREAS, the County and CONTRACTOR wish to amend the Original Agreement by **removing one million one hundred and fifty thousand dollars (\$1,150,000.00)** from the agreement reducing the maximum amount payable to CONTRACTOR to **fifty thousand dollars (\$50,000.00)** and **extending the term of the agreement through December 31, 2022.**

NOW THEREFORE, the parties agree:

1. Section 1.0 GENERAL DESCRIPTION of the Original Agreement is amended to read as follows:

1.01 The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit AA**, in conformity with the terms of this Agreement. The services are generally described as follows: and install furniture, chairs and accessories at all office locations occupied by the Department of Social Services.

2. Section 2.0 PAYMENT PROVISIONS of the Original Agreement is amended to read as follows:

2.01 COUNTY shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit AA**, subject to the limitations set forth in this Agreement. The total amount payable by COUNTY to CONTRACTOR under this agreement shall not exceed the sum of **\$ 50,000.00.**

3. Section 3.0 TERM OF AGREEMENT of the Original Agreement is amended to read as follows:

3.01 The term of this Agreement is from January 1, 2018 to **December 31, 2022**, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and

County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.

3.02 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice or with cause immediately.

4. Section 4.0 of the Original Agreement SCOPE OF SERVICES AND ADDITIONAL PROVISIONS is amended to read as follows:

4.01 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit AA	Scope of Services/Payment Provisions
Exhibit B	Quotations
Exhibit C	Warranty
Exhibit D	Tiered Pricing Discounts
Exhibit E	Lobbying Certification

5. Sections 2.01 of Exhibit B of the Original Agreement is amended to read as follows:

2.01 Outcome objectives and performance standards: CONTRACTOR shall, for the entire term of this Agreement, provide the service outcomes set forth in **Exhibit AA**. CONTRACTOR shall meet the contracted level of service and the specified performance standards described in **Exhibit AA** unless prevented from doing so by circumstances beyond CONTRACTOR's control including, but not limited to, natural disasters, fire, theft and shortages of necessary supplies or materials due to labor disputes.

6. Exhibit A of the Original Agreement is hereby rescinded and replaced by **Exhibit AA**, attached.

If there is any conflict or inconsistency between the provisions of the AGREEMENT, or this AMENDMENT, the provisions of this AMENDMENT shall govern. A copy of this AMENDMENT shall be attached to the original AGREEMENT, as it may have been previously amended.

Except as provided herein, all remaining terms, conditions, provisions, entitlements and obligations of the original AGREEMENT shall remain unchanged and unaffected by this AMENDMENT and shall continue in full force and effect.

IN WITNESS HEREOF, the parties hereby execute this amendment as follows:

COUNTY OF MONTEREY:

CONTRACTOR:

KBM-Hogue

By: _____
Lori Medina, Director

By: _____


Date: _____

Stan Vuckovich, CEO

Date: 10/17/19

Approved as to Form:

By: _____

Matt Denning, Corp. Secretary

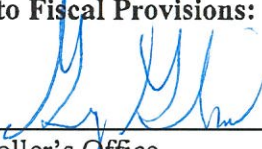

Deputy County Counsel

Matthew Denning
(Print Name and Title)

Date: 11.1.19

Date: 10/15/2019

Approved as to Fiscal Provisions:


Auditor-Controller's Office

Date: 11.4.19

Scope of Services / Payment Provisions

KBM Hogue

A. LOCATION OF SERVICES

Monterey County Department of Social Services (DSS) – All owned, occupied, leased, or rented facilities

B. CONTRACT TERM

January 1, 2018 – **December 31, 2021**

C. CONTACT INFORMATION

Primary County Contract Administrator:

Sylvia Solis – Administrative Services Officer
 1000 South Main St. Suite 304
 Salinas, CA 93901
SolisS@co.monterey.ca.us
 (831) 755-4483

Secondary County Contract Administrator:

Chris White – Administrative Services Assistant
 1000 South Main St. Suite 304
 Salinas, CA 93901
whitecc@co.monterey.ca.us
 (831) 755-4871

CONTRACTOR Information:

Lela Huenergardt – Account Manager
 160 West Santa Clara St. Suite 102
 San Jose, CA 95113
 (408) 351-7149
lela.huenergardt@kbm-hogue.com

D. BACKGROUND & PURPOSE

After consideration and evaluation of the CONTRACTOR's proposal, the County hereby engages CONTRACTOR to provide the services set forth in **RFP #10607** and in this Agreement on the terms and conditions contained herein and in **RFP #10607**. The intent of this Agreement is to summarize the contractual obligations of the parties.

E. SCOPE OF SERVICES

CONTRACTOR hereby agrees to provide the County with the products both identified in this Agreement and in CONTRACTOR's written proposal dated March 30, 2017, on file with the Monterey County Contracts/Purchasing Office (KBM Proposal).

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CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

E.1 Furnishings

CONTRACTOR hereby agrees to provide County with products including, but not limited to those identified within Exhibit B of this Agreement and in KBM Proposal.

CONTRACTOR shall make available to County its entire catalog of desks, chairs, workstations, modular panel walls, furniture components, accessories, and hardware. County retains the ability to purchase additional items, not listed, to respond to the changing needs of DSS.

E.2 Space Planning

CONTRACTOR shall create space use planning, AUTOCAD drawings, and interior design for any DSS location as requested by County.

E.3 Storage & Inventory Management

CONTRACTOR shall provide inventory management and product storage as requested by County. CONTRACTOR shall provide County with a monthly statement of all items currently being held in CONTRACTOR's inventory.

E.4 Set-Up, Delivery, & Training

CONTRACTOR shall:

- Review all approved installation drawings, review and inspect all of the ordered desks, chairs, workstations, modular panel walls, components and hardware before and after installation.
- Provide COUNTY with an approved quick ship, rapid response program for urgent installation requirements.
- Furnish, install, and set in place (completely assembled, functional and ready for use) at point of use all purchases made by County under this Agreement.
- Check bills of lading, verify orders, inspect for damage and reorder as necessary. CONTRACTOR will be expected to track all shipments and keep County project planners informed of schedules. If so notified, CONTRACTOR shall be required to participate in a pre-installation meeting with staging plan for delivery and installation.
- Provide on-site training to County staff on all furnished products as requested by County. Training shall include breakdown and setup procedures.

- Affix a label to each component installed with the following information: manufacturer name, unique serial number, and warranty expiration date. Label shall be placed in an accessible, but not visible location and be opposite any power connections or motors.
- Provide to County, at the completion of each project, a list, in spreadsheet format compatible with Excel, of all serial numbers and information on the associated parts including: Model Number, Manufacturer Name, Install Date, Warranty Expiration Date.

E.5 Cleanup

During performance and completion of work under this Agreement, CONTRACTOR shall:

Remove all unused equipment and instruments of service, all excess or unsuitable materials, trash, and debris, and legally dispose of the same, unless otherwise directed by the Agreement or by County.

Leave entire area in a neat, clean, and acceptable condition as approved by County.

E.6 Warranty

Services:

CONTRACTOR shall fully warrant all services against poor and inferior quality or workmanship for a period of not less than one (1) year from date of final acceptance by the County. Time is of the essence of this Agreement. CONTRACTOR shall repair or replace any inoperable materials or equipment in a timely manner during warranty period.

Equipment:

Warranty period set forth in Exhibit C – Warranty is for a 24-hour, 7 days a week, multi shift use warranty (includes parts and labor to repair). Should any failure to conform to this limited warranty appear to a product purchased under this Agreement, during the applicable warranty period from the date of shipment, CONTRACTOR shall, upon prompt written notice, repair or replace, at its option and costs, the affected part or parts.

Remedies:

The remedies provided above are the CONTRACTOR's sole remedies for any failure of CONTRACTOR to comply with its obligations regarding the workmanship of its Products. Correction of any nonconformity in the manner and for the period of time provided shall constitute complete fulfillment of all liabilities of CONTRACTOR, with respect to or arising out of the Product furnished hereunder.

Delay/Force Majeure

CONTRACTOR shall not be liable for failure to perform or for delay in performance due to fire, flood, strike or other labor difficulty, act of God, act of any governmental authority or off the County, riot, embargo, fuel or energy shortage, wrecks or delay in transportation, inability to obtain necessary labor, materials or manufacturing facilities from usual sources or failure of suppliers to meet their contractual obligations, or due to any cause beyond its reasonable control. If any such event occurs, CONTRACTOR may extend delivery dates by a period of time necessary to overcome the effect of such delay, allocate available Products, or cancel any purchase order.

Patents:

Subject to the following provisions, CONTRACTOR shall, at its own expense, defend or, at its option, settle any claim, suit or proceeding brought against the COUNTY, and/or its vendees, mediate and immediate, so far as based on an allegation that any Product or any part thereof furnished hereunder constitutes a direct or a contributory infringement of any claim of any patent of the United States or Canada. This obligation shall be effective only if County shall have made all payments then due hereunder and if CONTRACTOR is notified promptly in writing and given authority, information, and assistance for the defense of said claim, suit or proceeding. CONTRACTOR shall pay all damages and costs awarded in such suit or proceedings so defended.

Other Warranty Terms:

The foregoing indemnity does not apply to the following: Products supplied according to design other than that of CONTRACTOR, and which is required by County:

- Combination of the Product with another product not furnished hereunder unless CONTRACTOR is a contributory infringer.
- Any settlements of a suit or proceeding made without CONTRACTOR's written consent.

County's remedies set forth herein are exclusive and the liability of CONTRACTOR with respect to the breach of this Agreement or any contract entered into between the parties pursuant hereto shall not exceed the price of the Product or part on which such liability is based.

When a product is being replaced under any warranty, CONTRACTOR, at its sole expense, shall provide and set in place loaner equipment that is equivalent to the product being replaced.

E.7 Repairs Outside of Warranty

CONTRACTOR shall perform repairs to products outside of warranties listed in the above Section or in Exhibit C - Warranty. Any repair or replacement work to

any product outside of warranty must be approved in advance by a County Contract Administrator. CONTRACTOR shall provide loaner equipment to County during any repairs at no additional cost.

E.8 Tear Down

As requested by County, CONTRACTOR shall perform tear down of old furniture installations. For this Tear Down work, all sections of this Agreement shall be applicable to this work, including but not limited to Section E.5 Cleanup.

F. COUNTY RESPONSIBILITIES

County shall provide access to the facilities and provide a site manager as the project point of contact.

G. PUBLIC WORKS OF IMPROVEMENT REQUIREMENTS

G.1 Prevailing Wages:

If applicable, CONTRACTOR shall comply with provisions of the Labor Code (sections 1720, et seq.) governing public works, including payment of prevailing wages, payroll records and employment of apprentices. Copies of the determination of the general prevailing rate of per diem wages are available to interested parties at: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>.

G.2 DIR Registration:

During the entire term of this Agreement CONTRACTOR shall be registered with the California Department of Industrial Relations as a Public Works Contractor pursuant to Division 2, Part 7, Chapter 1, commencing with section 1720 of the California Labor Code.

G.3 Local Hiring per County of Monterey Code 5.08.120:

All provisions included in County of Monterey Code 5.08.120 are applicable to this Agreement, including, but not limited to:

County of Monterey Code Section 5.08.120 General Provisions: Unless such a provision would conflict with a State or Federal law or regulation applicable to a particular contract for public works of improvement, all County contracts for public works of improvement shall contain provisions pursuant to which the contractor promises to make a good-faith effort to hire Qualified Individuals who are, and have been for at least one year prior to the opening of bids, Residents of the Monterey Bay Area in sufficient numbers so that no less than fifty (50) percent of the contractor's total construction work force, including any subcontractor work force, measured in labor work hours, is comprised of Monterey Bay Area residents.

For the purposes of this Section, the following terms have the meanings indicated:

- "Qualified individual" shall mean a person who is specially trained, skilled, and experienced in the work, trade, or craft specified in the portion of the

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public work of improvement to be performed or who is enrolled in a certified State or federally approved apprenticeship program in the applicable trade or who is a journey person in his or her applicable trade.

- "Resident of Monterey Bay Area" shall mean a person who resides within the boundaries of Monterey County, Santa Cruz County, or San Benito County.

H. ORDER PROCESS & PURCHASE ORDERS

All products and services ordered by County from CONTRACTOR under this agreement shall be ordered as individual Projects. Each Project shall be quoted by CONTRACTOR and County shall issue a unique purchase order issued for that Project. Purchase Orders shall only be valid during the County Fiscal Year (July 1 – June 30) in which they are issued.

I. ACCESSIBILITY

CONTRACTOR shall inform himself regarding any peculiarities and limitations of the spaces available for the installation of all work and materials furnished and installed under this Agreement. CONTRACTOR shall exercise due and particular caution to determine that all parts of CONTRACTORS work are made quickly and easily accessible. CONTRACTOR shall immediately report to County any damages to the premises resulting from services performed under this Agreement.

J. DAMAGE

CONTRACTOR shall be held responsible for any breakage, loss of County's equipment or supplies through negligence of the CONTRACTOR or CONTRACTOR's employee while working on the County's premises. CONTRACTOR shall be responsible for restoring/replacing any equipment, facilities, etc. so damaged.

K. PROTECTION OF PUBLIC

CONTRACTOR shall provide adequate warning devices, barricades, guards, flagmen, or other necessary precautions shall be provided by CONTRACTOR to give advice and reasonable protection, safety and warning to persons and vehicular traffic concerned in the areas affected by this Agreement.

L. LICENSING/SECURITY REQUIREMENTS

CONTRACTOR is required to ensure that all services, costs, and materials must, at minimum, meet the specifications for State of California and CAL/OSHA regulations, as applicable.

CONTRACTOR is to ensure that the insurance and required licenses under both state and local jurisdictions are current during the full term of the AGREEMENT.

CONTRACTOR shall be required to submit appropriate State level criminal background clearance(s) for all personnel required to work within County facilities that are deemed restricted or high security.

- A California licensed Investigator must perform the required State level criminal background check(s) which must then be submitted to the County prior to the personnel being allowed to work within such County facilities.
- CONTRACTOR is responsible for the cost of the State level criminal background check(s).
- The required background checks SHALL be completed prior to allowing the personnel to work within any of the facilities.

M. PAYMENT PROVISIONS

M.1 Compensation/Payment

County shall pay CONTRACTOR according to the terms set forth in Section 6, PAYMENT CONDITIONS, of this Agreement.

The maximum amount payable by County to CONTRACTOR under this Agreement shall not exceed **fifty thousand dollars (\$50,000)**.

CONTRACTOR and County shall negotiate pricing of any orders for products or service not listed in this Agreement prior to CONTRACTOR commencing work, ordering, or installing any products.

CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this Agreement without first obtaining written approval from County.

CONTRACTOR warrants that the cost charged for services under the terms of this contract are not in excess of those charged any other client for the same services performed by the same individuals.

M.2 Tiered Pricing

CONTRACTOR'S compensation for products purchased shall be based on the rates set forth in Exhibit B – Catalog List Pricing, KBM Proposal, and all other current catalogs.

Discounts from the catalog prices, those presented in the KBM Proposal, and those shown in Exhibit B shall be set per the discount rates set forth in Exhibit D - Tiered Pricing.

Any discounts offered by CONTRACTOR must allow for payment after receipt and acceptance of services, materials or equipment and correct invoice, whichever is later. In no case will a discount be considered that requires payment in less than 30 days.

M.3 Labor Rates

County shall pay CONTRACTOR for:

- Project Management at a rate of \$90.00 per hour
- Space Planning/Design services at a rate of \$87.55 per hour.
- Training for product setup and breakdown at a rate \$90.00 per hour.
- Training on product use shall be provided to County at no cost.
- For non-prevailing wage labor, that is not required to comply with provisions of the Labor Code (sections 1720, et seq.), at a rate of \$80.00 per hour for installation, tear down, and repairs.
- For non-prevailing wage labor, that is not required to comply with provisions of the Labor Code (sections 1720, et seq.), at a rate of \$75.00 per hour for furniture delivery.

Labor outside of regular business hours (7am – 7pm Monday through Friday excluding Federal holidays) shall be billed with a surcharge of 40%.

M.4 Delivery, Storage & Inventory Management

Beginning on the 31st day of inventory storage, County shall pay CONTRACTOR \$1.65 per square foot per day of utilized space for all things inclusive of storage and management of inventory.

County shall pay CONTRACTOR a flat “truck charge” of ninety-one dollars (\$91.00) for each round-trip delivery to any DSS location regardless of order size. No other travel reimbursement shall be allowed during this Agreement.

M.5 Rate Changes

Changes for labor rates and product prices shall not increase more than 3% annually during the term of this Agreement and any subsequent amendments to this Agreement. CONTRACTOR shall notify County in writing of any proposed changes to product costs or labor rates no less than ninety (90) days prior to the date proposed for the changes to become effective to allow ample time for negotiation.

M.6 Tax

All pricing shown in this Agreement is inclusive of all applicable taxes.

County is registered with the Internal Revenue Service, San Francisco office, with registration number 94-6000524. The County is exempt from Federal Transportation Tax; an exemption certificate is not required when shipping documents showing Monterey County as consignee.

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M.7 CONTRACTORS Billing Procedures

Invoices shall be submitted upon completion of work no later than 30 days after completion of services. All invoices shall reference RFP #10607. Final invoice for work performed in a County Fiscal Year shall be submitted no later than July 10th of the following fiscal year, and be mailed to:

Sylvia Solis
1000 South Main St. Suite 304
Salinas, CA 93901

In the event that the Agreement is terminated prior to the completion of the services, the amount paid shall be prorated for services and equipment provided prior to the date of termination, should the County determine a reimbursement is owed, CONTRACTOR shall reimburse the County within thirty (30) days of the termination.

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