

## Program Services Agreement

### Parties

Commission: Children and Families Commission of Fresno County, California

Contractor: «Org\_Name», «Org\_Street\_Address», «Org\_City», «Org\_State»,  
«Org\_Postal\_Code»

### Administrative

Contract Number: «Request\_Reference\_Number»

### Recitals

- A. The voters of the State of California have enacted the California Children and Families Act of 1998 (the "Act"), codified in Health and Safety Code Section 130100 *et seq.*, also known as Proposition 10.
- B. The Board of Supervisors of Fresno County has established Commission pursuant to the Act and Fresno County Ordinance Code, Chapter 2.38 of Title 2 Sections 2.38.010, 2.38.020 and 2.38.030.
- C. Commission desires to create and implement a comprehensive, collaborative, and integrated system for the purposes of promoting, supporting, and improving the early development of children residing in Fresno County from the prenatal stage through 5 years of age.
- D. Commission is authorized to enter into agreements for professional services pursuant to the Act and the Fresno County Ordinance Code.
- E. Commission desires to retain Contractor to provide the services described in this Agreement.
- F. Contractor is able, qualified, and willing to perform these services for Commission.

Therefore, in consideration of the above recitals, which are incorporated into this Agreement by reference, the Parties agree as follows:

#### 1. Term

This Agreement begins and is made effective as of «Request\_Project\_Start\_Date» (the "Effective Date"), and ends on «Request\_Project\_End\_Date», unless terminated earlier under this Agreement (the "Term").

#### 2. Performance

- 2.1 **Services.** Contractor must provide, to the complete satisfaction of Commission, all services described in **Exhibit A**, "Scope of Work" (attached and incorporated into this Agreement) (the "Services").
- 2.2 **Budget.** Contractor must comply with all criteria and standards contained in **Exhibit B**, "Project Budget" (attached and incorporated into this Agreement).

## 2.3 Purpose

- A. Pursuant to state law and local ordinances, Contractor must provide the Services for the sole purpose of promoting, supporting, and improving the early development of children residing in Fresno County from the prenatal stage through 5 years of age. Contractor must only:
- (1) Provide the Services to children ages prenatal through 5 who permanently reside in Fresno County;
  - (2) Provide the Services to parents, primary care givers, or legal guardians of children ages prenatal through 5 who permanently reside in Fresno County; or
  - (3) Provide the Services to another service provider, who in turn provides services to (i) children ages prenatal through 5 who permanently reside in Fresno County, or (ii) the parents, primary care givers, or legal guardians of these children.
- B. **By initialing below, Contractor certifies, represents, and warrants to Commission that it will only provide the Services, as defined in Section 2.1 above, in a manner that directly or indirectly benefit children from the prenatal stage through 5 years of age who permanently reside in Fresno County, and will not provide any portion of the Services for the direct or indirect benefit of another person or entity.**

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Contractor's Initials

- 2.4 **Capabilities.** Contractor represents and warrants that it has the expertise, appropriate licenses, support staff, and facilities necessary to provide the Services in a timely and professional manner.
- 2.5 **Commencement of Services.** Contractor must begin performing the Services within 60 days of the Effective Date.

## 3. Compliance with Strategic Plan, Service Provider Manual, and Other Requirements

- 3.1 **Strategic Plan.** Contractor must provide the Services in a manner consistent with the objectives in Commission's Strategic Plan, attached as **Exhibit C** and incorporated into this Agreement (the "Strategic Plan"). In order to carry out these objectives, Commission may, from time to time and at Commission's sole discretion, request Contractor to work with other Commission-affiliated service providers in order to integrate the Services into other programs funded directly or indirectly by Commission. Contractor must make reasonable efforts to comply with Commission's request.
- 3.2 **Service Provider Manual.** Contractor must comply with all policies and procedures set forth in Commission's Service Provider Manual, as amended, a current version of which is attached as **Exhibit D** and incorporated by reference (the "Manual"). Commission may review and amend the Manual annually as Commission considers necessary in its sole discretion. Contractor must review Commission's website ([www.first5fresno.org](http://www.first5fresno.org)) by July 1st of each year during the Term to retrieve an updated Manual, or as otherwise notified by Commission. Contractor must comply with any and all changes made to the Manual unless Contractor sends notice of termination of this Agreement to Commission within 10 days after it receives an updated manual or after Commission notifies Contractor to retrieve an updated manual, whichever the case may be.

3.3 **Other Requirements.** Contractor must comply with all other criteria and standards contained in this Agreement and all exhibits, and any additional Commission policies, procedures, or other requirements in effect during the Term.

#### 4. Compensation

4.1 **Project Budget.** Compensation for the Services is based on actual costs as described in Exhibit B.

4.2 **Reimbursement.** Commission will reimburse Contractor for all necessary and reasonable expenses incurred in accordance with the Project Budget for providing the Services on behalf of Commission in an aggregate amount not to exceed \$«Request\_Grant\_Amount» (the “Contract Amount”). Commission will follow the reimbursement process set forth in the Manual, as amended. Payment on all invoices is contingent upon Contractor’s compliance with all contractual requirements including, but not limited to, the achievement of performance standards and the timely submission of Financial Reports and Progress Reports, as defined below and further described in the Manual, as amended.

A. **Financial Report.** Contractor must request reimbursement by submitting to Commission quarterly, or as often Commission requires or allows, an invoice and an expenditure report setting forth actual expenditures as compared to the Project Budget (a “Financial Report”). Each Financial Report must include a disbursement list or check register reflecting all disbursements. Contractor must submit each Financial Report according to the guidelines set forth in the Manual, as amended.

B. **Progress Reporting Requirements.** Commission utilizes a designated, web-based database and data management program called “Persimmony.” If applicable to the Services or any program under the Scope of Work (Exhibit A), Contractor must submit client level data on a monthly basis via Persimmony. Contractor must also submit progress reports on a quarterly basis via Persimmony. Any and all aggregate data, if applicable to the Services or any program under the Scope of Work (Exhibit A), is due on a quarterly basis via Persimmony. Commission must receive quarterly requirements no later than the 15th day after the ending of the previous quarter, or as Commission requires. Contractor must submit all data and reports in a form provided by Commission and according to the guidelines, policies, and procedures set forth in the Manual, as amended.

4.3 **Disallowed Costs.** Commission will not reimburse Contractor for any expense that it determines, in its sole discretion, to be a supplanting of funds or program income, as described below, or a disallowed cost, as further described in the Manual, as amended.

4.4 **Advances.** If Contractor desires funds prior to commencing the Services, Contractor must request, by written notice received by Commission, early release of funds from Commission. This request must be on Contractor’s company letterhead, must specify the amount requested, and must set forth all reasons why contractor needs the funds. Commission has the sole discretion whether or not to release any funds before Contractor performs Services but will not release more than 50% of the annual budget amount, as listed in the Project Budget (Exhibit B). If Commission releases funds before Contractor performs Services, Commission will not release any additional funds, at any time, unless and until 75% of the previously released funds have been properly expended and reported.

4.5 **Setoff Against Debts.** Commission may deduct from any payments due to Contractor any monies Contractor owes Commission under this Agreement or any other agreement.

## 5. Supplementing Existing Service Levels and Supplanting Other Funding

- 5.1 **Supplanting Law & Policy.** The Parties are bound by the provisions of Commission's supplanting policy (as set forth in the Manual, as amended) and Section 30131.4(a) of the Revenue and Taxation Code, which states:

All moneys raised pursuant to taxes imposed by Section 30131.2 shall be appropriated and expended only for the purposes expressed in the California Children and Families Act, and shall be used only to supplement existing levels of service and not to fund existing levels of service. No moneys in the California Children and Families Trust Fund shall be used to supplant state or local General Fund money for any purpose.

- 5.2 **Prohibition Against Supplanting.** Contractor must not use any funds provided by Commission to supplant existing funds in contravention of law or Commission policy. Contractor must use any moneys leveraged, obtained through matching funds, part of governmental or private grant funds, or in any way resulting from the use of funds provided by Commission, solely in performing the Services, as defined in Section 2.1 above. Contractor's use of these funds is subject to Commission's approval at Commission's sole discretion.

### 5.3 Additional Funds

- A. **Receipt of Additional Funds.** If Contractor receives any funding for services from state, federal, or local governmental agencies that is not otherwise earmarked (general funds) for particular projects ("Additional Funds"), Contractor must immediately notify Commission in writing of the amount of Additional Funds received and all terms and conditions attached to Contractor's use of the Additional Funds. Contractor must use as much of the Additional Funds as possible towards providing the Services, as defined in Section 2.1 above. Commission will no longer reimburse Contractor for any expenses Contractor incurs in providing the Services to the extent Contractor did use or could have used Additional Funds to pay for the same portion of the Services. Commission, at its sole discretion, will continue to fund up to the current balance of the Contract Amount for the remainder of the Term, but only to the extent that the Services are unrelated to the services funded by the Additional Funds.
- B. **Abuse of Additional Funds.** Commission may, at its sole discretion, investigate Contractor's use of Additional funds and may require Contractor to document its use of the Additional Funds along with funds it receives under this Agreement. If Commission determines, in its sole discretion, that Contractor used both Commission funds and Additional Funds to pay for any expense substantially similar or reasonably related to the Services, Contractor must reimburse Commission for all Commission funds expended in this manner. Commission may also, at its sole discretion, require that Contractor certify to Commission that it is not using or will not use Additional Funds to fund any portion of the services funded by Commission.

## 6. Program Income

- 6.1 **Definition.** "Program Income" means gross income earned by Contractor that is directly generated by a supported activity or earned as a result of funds awarded by Commission or procured directly or indirectly under this Agreement. Program Income includes, but is not limited to, income from fees for Services performed, the use or rental of real or personal property acquired under Commission-funded projects, the sale of commodities or items fabricated under funds awarded by Commission, license fees and royalties on patents and copyrights, and interest on loans made with funds awarded by Commission.

6.2 **Restrictions on Use.** Contractor must only use Program Income for the purpose of performing the Services, as defined in Section 2.1 above. Contractor must place and maintain Program Income in a separate cost center or fund trackable in Contractor's accounting system for Contractor's performance of the Services. Contractor must notice Commission immediately upon ascertaining the existence of Program Income. Commission may offset future disbursements and reimbursements to Contractor in an amount equal to all funds identified by Contractor as Program Income, and that Commission determines, in its sole discretion, to be Program Income.

## 7. Fiscal Compliance

7.1 **Management of Funds.** Contractor must not commingle funds it receives directly or indirectly under this Agreement with any other funds. Contractor must use all funds procured directly or indirectly under this Agreement solely for the provision of the Services as set forth in this Agreement. Contractor must comply with the controls, record keeping, and fund accounting procedure requirements of Commission (specified in the Manual, as amended), and all federal, state, and local regulations and directives, to ensure the proper disbursement of, and accounting for, program funds paid to Contractor and disbursed by Contractor under this Agreement.

7.2 **GAAP.** Contractor must track and report costs in conformance with Generally Accepted Accounting Principles ("GAAP").

7.3 **Financial Statement.** Contractor must submit an annual, independently audited, financial statement to Commission on or before April 30th of each year during the Term.

7.4 **Cost Allocation Plan.** Contractor must prepare and comply with a cost allocation plan. Contractor must submit this plan prior to executing this Agreement.

## 8. Disseminating Information and Attending Meetings/Trainings

8.1 **Disseminating Information and Outreach.** Contractor, at Commission's request and to Commission's reasonable satisfaction, must disseminate materials regarding outreach or any other topic that Commission considers necessary in its sole discretion. Commission will provide these materials to Contractor with reasonable notice and instructions for dissemination.

8.2 **Attending Meetings and Trainings.** Contractor, at Commission's request and upon reasonable notice, must attend meetings and trainings regarding outreach or any topic that Commission considers necessary in its sole discretion.

## 9. Commission's Oversight of Contractor

9.1 **Monitoring and Evaluation.** Commission will monitor and evaluate performance of the Services through all means it considers necessary, in its sole discretion, to ensure that Contractor is complying with the Act and the terms of this Agreement. Commission may establish and provide policies and procedures governing the means by which it monitors, evaluates, and reports on Contractor's performance and how it makes funding decisions. Contractor understands that any determination regarding the successful provision of the Services for purposes of the continuation of funding under this Agreement is solely the responsibility and within the discretion of Commission.

9.2 **Data Collection.** Contractor must fully cooperate with Commission in the development and implementation of monitoring and evaluation activities including, but not limited to, data collections, data entry, reporting activities, and deadlines for deliverables described in Exhibit B, and as otherwise required by Commission. As Part of Commission's monitoring and evaluation process,

as well as its obligation to carry out its objectives, Contractor must provide all data and information required by Commission at any time during the Term, or as otherwise required by this Agreement. Commission will only request data that is directly or indirectly related to the Services. Contractor must enter client level data in the Persimmony database, including, but not limited to, all individually identifiable information.

**9.3 Annual Contract Review and Visits.** Commission will, at any time, annually review this Agreement as part of its monitoring or evaluation activities (the “Annual Contract Review” or “ACR”). During an ACR, Commission will make site visits to any and all locations where the Services are being provided. Commission may also make additional visits, at any time and at any location, at Commission’s sole discretion. The frequency of these additional visits will vary depending on the findings made by Commission staff in any ACR. Commission will make all visits either unannounced if during Contractor’s regular business hours, or at any other time upon reasonable notice. Contractor must cooperate with Commission and make all records available to Commission during all activities related to the ACR.

#### **9.4 Audit and Inspection**

A. Contractor must maintain and make available to Commission accurate books and records relevant to all its activities under this Agreement. Commission may conduct one or more audits or examinations (the “Audit and Inspection Activities”). As part of the Audit and Inspection Activities, Commission may copy any records, including, without limitation, invoices, materials, personnel records, client files, sign-in sheets, or any other information or data related to all matters covered by this Agreement. Contractor must reasonably cooperate with Commission’s efforts to carry out the Audit and Inspection Activities. Notwithstanding the Term, the Audit and Inspection Activities will continue in full force and effect for 4 years from the expiration of the Term, or until Commission has notified Contractor in writing that the Audit and Inspection Activities are completed, whichever occurs last.

B. Contractor must immediately report to Commission any incidents of fraud, abuse, or other criminal activity regarding provision of the Services or otherwise related to this Agreement or the expenditure of Commission funds.

**9.5 Record Retention.** Contractor must maintain records in accordance with the policies and procedures set forth in the Manual, as amended. All records must describe and support the use of funds for the Services. Contractor must maintain all data and records in an accessible and secure location in good condition for at least 4 years from the expiration of the Term or until Commission has notified Contractor in writing that the Audit and Inspection Activities are completed, whichever occurs last. In the event that Contractor misplaces, losses, or otherwise fails to maintain all data and records in accordance with this Section or the Manual, as amended, Commission, at its sole discretion, may disallow any costs directly or indirectly related to the missing, lost, or improperly maintained record or records.

**9.6 Governmental Agencies and State Auditor General.** The State of California or any state, federal, or local agency having an interest in the subject of this Agreement has the same rights as conferred upon Commission under this Section. If this Agreement exceeds \$10,000, Contractor is subject to the examination and audit of the State Auditor General for a period of 3 years after final payment under this Agreement (Government Code § 8546.7).

**9.7 Single Audit Act.** Even though funds received under this Agreement are not federal funds, Contractor is audited under the Single Audit Act and OMB Circular A-133, it must have its independent auditor include the funds received and expended under this Agreement as part of the

testing. Although the programs tested under these provisions are selected on a risk-based approach, and for Federal Government purposes this Agreement would not be included in that analysis, Commission requires that at least a representative number of transactions will be selected for testing from these contracted funds. The number of transactions selected could be based on a statistical sampling method, materiality levels, or on the auditor's judgment as long as the auditor determines that the expenditures made are appropriate under this Agreement. Commission reserves the right to create audit guidelines with which Contractor must comply.

9.8 **Costs of Oversight Activities.** Commission will bear reasonable costs in connection with or resulting from its regular monitoring, evaluation, data collection, site visits, inspection, or other oversight activities related to this Agreement. If, however, Commission (including Commission's Executive Director) determines that it will conduct further oversight activities to determine whether or not Contractor committed fraud, breach, or other misrepresentation related to the Services or in connection with Contractor's performance of this Agreement, Contractor will bear any costs Commission incurs as a result of conducting these additional activities. These costs will include, but not limited to: actual costs incurred (including, but not limited to, consulting, auditing, and legal fees, costs, and expenses); the payment or repayment of any expenditures disallowed by Commission or any federal, state, or local governmental entities; and any interest and penalties assess by any federal, state, or local governmental agency.

9.9 **Penalty.** Contractor must submit all required documents, reports, and data as required in this Agreement or otherwise specified in the Manual, as amended, in a timely and accurate manner. Failure to timely and accurately submit such information will result in the Commission imposing penalties as specified in the "Penalties" section of the Manual. These penalties may include, without limitation, loss of rights to receive advances under section 4.4 above, transition to monthly reimbursement and reporting, the assessment of a 5% penalty on the final invoice amount, suspension without payment, and termination. If Contractor fails to timely or accurately submit any required document, report, or data under this Agreement, Commission will place Contractor on a list of flagged service providers. Contractor may appeal the penalty in writing to the Commission or designated standing committee, on Contractor's company letterhead, setting forth the extenuating circumstances that caused the tardy or inaccurate submission. Commission has sole discretion whether to waive any penalty.

9.10 **Submission of Information and Data**

A. **By initialing below, Contractor certifies, represents, and warrants that it will submit all information and data, including but not limited to, individually identifiable physical or mental health information, substance abuse information, child care or education information, personnel or employment information, financial information, criminal justice information, or demographic information, provided to Commission, as part of Commission's monitoring, evaluation, and auditing activities, and that such submission will not violate any current federal, state, or local law or regulation.**

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Contractor's Initials

B. If, during the Term, the Federal government, State of California, or any political subdivision with jurisdiction over the Services, adopts or amends a law or regulation under which Contractor believes it may no longer legally provide Commission with some or all of the information and data requested under this Section, Contractor must submit to Commission, in writing, a legal memorandum from Contractor's attorney detailing why Contractor believes complying with this Section would violate the new or amended law or regulation and proposing a reasonable solution. Commission will review this memorandum and will determine, in its sole discretion,

whether to accept Contractor's proposed solution, terminate this Agreement, or pursue any other remedy under this Agreement or at law. Commission will comply with the California Public Records Act, Government Code §§ 6250 *et seq.*, as may be amended during the Term.

#### 9.11 Confidentiality

- A. Contractor acknowledges that during the Term it might have access to Confidential Information required for effective coordination and delivery of services to children and their families. Contractor will ensure that all of its employees, agents, contractors, and representatives will comply with the terms and conditions of this Agreement and all applicable laws regarding the access, use, and dissemination of Confidential Information. All confidential discussions, deliberations, and Confidential Information generated, submitted, or maintained in connection with this Agreement must be disclosed only to persons who have a specific and bona fide "need to know" and authority to access Confidential Information. Furthermore, Contractor must not disclose to third parties (i) any Confidential Information without the express written consent of Commission, and (ii) any individually identifiable Confidential Information related to a child without the additional written authorization from the child's parent or legally authorized representative.
- B. For purposes of this Agreement and to the extent permitted by law, "Confidential Information" includes, but is not limited to, any data, ideas, know-how, materials, products, formulas, processes, technology, computer programs, specifications, drawings, diagrams, manuals, plans, policies, software, financial information, personnel information, client information, any information entered into or contained in Commission's Persimmony database (or other data management program used by Commission), and other information disclosed or submitted, orally, in writing, or by any other media; provided, however, that Confidential Information shall not include information that (i) is or becomes generally available to or known by the public other than as a result of a disclosure made by the Parties; (ii) is disclosed by Contractor because such information was compelled by court order; or (iii) was available to Contractor on a nonconfidential basis prior to disclosure by Commission or an affiliate of Commission and prior to the Effective Date.

#### 10. Multi-Year Agreements

If this Agreement covers more than one (1) fiscal year of Commission (July through June), Contractor must submit a revised Scope of Work (Exhibit A) and Project Budget (Exhibit B) for Commission's review, revision, and approval. Contractor must submit these documents to Commission in accordance with the Manual, as amended. Commission has the sole discretion whether or not to revise and/or approve any revision to a multi-year agreement.

#### 11. Materials Identification and Ownership

- 11.1 **Identification.** Contractor will acknowledge and give proper credit to Commission as the funding source in all publications that are paid for by Commission funds or used by Contractor in providing the Services ("Information Materials"). These Information Materials include, but are not limited to, posters, press releases, brochures, and other publicity or public relations materials. To appropriately credit Commission, Contractor must comply with the "Proper Crediting Policy" in the Manual, as amended. Commission may elect, at its sole discretion, not to reimburse Contractor for the costs of any Information Materials for which Contractor fails to properly credit Commission. Commission, at its sole discretion, may elect to treat as a disallowed cost the costs of any Information Materials not properly credited to Commission.

11.2 **Ownership.** All Information Materials and records related to the Services, as defined in Section 2.1 above, are the property of Commission. Contractor, at Commission's sole discretion, must turn over all Information Materials to Commission at the expiration of the Term or earlier termination of this Agreement. Commission, at its sole discretion, may elect to treat as a disallowed cost the costs of any Informational Materials that Contractor fails to turn over to Commission.

## 12. Fingerprinting and Child Abuse Prevention

12.1 **Fingerprinting.** Contractor represents and warrants that all its employees, agents, volunteers, and subcontractors, who directly provide Services to children, are (and will be) fingerprinted according to state and federal law and have (and will have) a criminal clearance which states that they do not have a criminal history which would compromise the safety of children. Additionally, irrespective of any federal or state legal requirements, Contractor represents and warrants that any of its employees, agents, volunteers, or subcontractors who will or may have direct, unsupervised access to children in connection with the Services, are (and will be) fingerprinted and have the same criminal clearance described in the preceding sentence. Contractor may include costs associated with these fingerprinting and background checks in its proposed budget.

12.2 **Child Abuse Prevention.** Contractor represents and warrants that it will report all known or suspected instances of child abuse or neglect to either local law enforcement or county child welfare services consistent with state and federal law. Contractor further represents and warrants that each and every employee, agent, volunteer, or subcontractor who directly provides Services to children has received annual training regarding child abuse and neglect prevention and reporting and must sign a statement acknowledging that they understand the child abuse reporting laws and will comply with same.

## 13. Independent Contractor

13.1 **Status.** Contractor is an independent contractor. All persons employed to furnish the Services are employees of Contractor and not of Commission. In performance of the Services, Contractor, including any and all of Contractor's owners, officers, agents, employees, and independent contractors, will at all times be acting and performing as an independent contractor, and will act in its independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of Commission. Commission has no right to control, supervise, or direct the manner or method by which Contractor performs its obligations under this Agreement. However, Commission may administer this Agreement so as to verify that Contractor is performing its obligations in accordance with the terms and conditions of this Agreement.

13.2 **Employer Duties.** Contractor has the sole obligation to provide its employees with all legally required notices and postings, as well as all employee wages and benefits, and will make all Social Security and other withholdings required by applicable federal or state laws and regulations.

## 14. Subcontracts

14.1 **Contractor's Responsibility.** Contractor assumes full responsibility for the performance of the Services, whether or not directly provided by Contractor. Contractor is considered the sole point of contact regarding contractual matters, including payment of any and all charges resulting from this Agreement. Contractor is responsible to Commission for the full and proper performance of any subcontract. Any subcontractor is subject to the same terms and conditions to which Contractor is subject under this Agreement.

14.2 **Procedures for Subcontracting.** If Contractor desires to subcontract with one or more third parties to carry out a portion of the Services, any subcontract must be in writing and approved as to form and content by Commission prior to execution and implementation. If the subcontract amount exceeds \$5,000, Contractor must submit, in addition to the subcontract, a budget or fee schedule for the subcontract. Commission has the sole right to reject any proposed subcontract. Any subcontract, together with all other activities by or caused by Contractor, may not require compensation greater than the Contract Amount. Contractor must submit an executed copy of any subcontract and must receive a receipt confirmation from Commission before any implementation.

## 15. **Defense, Indemnity, and Hold Harmless**

Contractor must defend, indemnify, and hold harmless Commission, its directors, officers, employees, agents, independent contractors, authorized volunteers, attorneys, and consultants from and against all losses, costs, demands, attorneys' fees, expenses, obligations, liabilities, penalties, interests, recoveries, damages, claims, and judgments alleged to result from, arise out of, or be in any way connected with any willful acts, active or passive negligence, errors, or omissions, including violation of any law or regulation, of Contractor or Contractor's directors, officers, employees, agents, independent contractors, or volunteers, directly or indirectly related to the performance of the Services, as defined in Section 2.1 above.

## 16. **Insurance**

16.1 **Required Coverage.** On or before the Project Start Date, Contractor must furnish to Commission satisfactory proof of the required insurance (Certificates of Insurance), which must include a commitment by Contractor's insurers that they will mail notice of any cancellation or reduction of coverage below the amounts required by Commission, at least 30 days prior to the effective date of the cancellation or change. Contractor may not perform any work under this Agreement until Contractor has obtained all insurance required under this Section and the required certificates of insurance have been filed with and approved by Commission. Contractor must pay any deductibles and self-insured retentions under all required insurance policies. All insurance afforded by Contractor pursuant to this Agreement must be primary to and not contributing to any other insurance maintained by Commission. Contractor must have the following insurance:

- (1) **Commercial General Liability.** Comprehensive general liability coverage of at least \$1 million per occurrence, \$2 million annual aggregate. Contractor must list Commission as additional insured.
- (2) **Workers' Compensation.** Workers' Compensation Insurance in accordance with the California Labor Code.
- (3) **Automobile Liability.** Comprehensive automobile liability coverage with a combined single limit of at least \$1 million per accident for bodily injury and property damage on all vehicles operated under Contractor's authority, whether or not owned by Contractor. Contractor must list Commission as additional insured.
- (4) **Professional Liability (Errors and Omissions).** If Contractor employs or contracts with licensed professional staff in performing the Services, professional liability (errors and omissions) insurance with limits of at least \$1 million per occurrence, \$3 million annual aggregate.

(5) **Fidelity Bond or Insurance.** In accordance with Section 17 below, or otherwise at Commission's request, a Fidelity Bond of at least \$1 million or insurance with limits of at least \$1 million, including coverage for theft or loss of Commission property.

16.2 **Rating.** All insurance must be issued by a company or companies listed in the current "Best's Key Rating Guide" publication with a minimum of a "B+;V" rating, or in special circumstances, be pre-approved by Commission.

16.3 **Endorsements.** Contractor must obtain endorsements to the general liability and auto insurance policies, giving Commission an unrestricted 30 day prior written notice of cancellation or change in terms or coverage. Contractor must also obtain an endorsement to the workers' compensation policy giving Commission an unrestricted 10 day prior written notice of any cancellation or change in terms or coverage.

16.4 **Self-Insured.** If Contractor is, or becomes during the Term, self-insured or a member of a self-insurance pool, Contractor must provide coverage equivalent to the insurance coverage and endorsements required above. Commission will not accept this coverage unless Commission determines, in its sole discretion and by written acceptance, that the proposed coverage is equivalent to the above-required coverage.

16.5 **Liability and Other Actions.** Compliance with the insurance requirements discussed above will not relieve Contractor of any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor will it preclude Commission from taking any other actions available to it under any other provision of this Agreement or otherwise in law.

16.6 **Failure to Maintain Insurance.** If Contractor fails to maintain the insurance required in this Section, Commission may terminate this Agreement and recover damages in accordance with Section 18 below. Alternatively, Commission may, in its sole discretion, purchase the required insurance coverage and, without further notice to Contractor, Commission may deduct from sums due to Contractor any premiums and associated costs advanced or paid by Commission for the insurance. If the balance of monies obligated to Contractor pursuant to this Agreement is insufficient to reimburse Commission for the premiums and any associated costs, Contractor must reimburse Commission for the premiums and pay for all costs associated with the purchase of this insurance. Any failure by Commission to take this alternative action will not relieve Contractor of its obligation to obtain and maintain the insurance coverage required by this Agreement.

## 17. Individuals Handling Funds

No employee, agent, or independent contractor of Contractor who has been convicted of a felony or against whom a civil judgment has been entered based upon misappropriation of funds or similar action may have authority or discretion over disbursements or withdrawals of funding provided to Contractor by Commission. All individuals having authority to disburse or withdraw funds received by Contractor from Commission must be bonded in the amount described in Section 16.6 above and must be identified in **Exhibit E** of this Agreement (attached and incorporated into this Agreement), unless Commission, in its sole discretion, allows Contractor to provide proof of insurance covering employee dishonesty in accordance with this Agreement.

## 18. Termination

18.1 **Non-Allocation of Funds.** The terms of this Agreement, and the Services and funds to be provided, are contingent on the continued appropriation of funds to Commission by all federal, state, or local appropriating agencies. Should Commission not receive, or otherwise receive a

reduction of, appropriated funds from any appropriating agency, Commission may, in its sole discretion, have the option to modify the scope of the Services, or terminate this Agreement at any time by giving Contractor 30 days prior written notice.

18.2 **Breach of Contract.** Commission may immediately suspend or terminate this Agreement in whole or in part, where Commission, in its sole discretion, determines that Contractor has breached this Agreement. Commission may determine that Contractor has breached this Agreement if it determines, in its sole discretion, that Contractor:

- (1) Illegally or improperly used any funds procured directly or indirectly under this Agreement;
- (2) Improperly performed any of the Services, as defined in Section 2.1 above;
- (3) Failed to begin performing the Services within 60 days of the Effective Date.
- (4) Failed to comply with the Strategic Plan, the Manual, or any other Commission policy, procedure, or requirement, as amended;
- (5) Failed to submit, failed to timely submit, or inaccurately or incompletely submitted, any reports, data, information, documents, books, or other records required under this Agreement;
- (6) Failed to maintain at all times the insurance required by this Agreement;
- (7) Has a financial interest, direct or indirect, that is not disclosed to Commission by the Effective Date or that conflicts in any manner with the performance of the Services;
- (8) Used Additional Funds in violation of this Agreement
- (9) Failed to meet any deadlines specified in the Scope of Work (Exhibit A); or
- (10) Failed to comply with any term of this Agreement.

18.3 **Without Cause.** Under circumstances other than those set forth in Section 18.2, this Agreement may be terminated by either Party upon giving the other Party 30 days advance written notice of an intention to terminate.

18.4 **Payment to Contractor and Remedies.** If this Agreement is terminated as provided above, Commission has no obligation to further compensate Contractor, except for Services satisfactorily performed prior to the date of termination. Commission may withhold payment of funds, or, if payment has been made, demand that Contractor repay any funds disbursed to Contractor under this Agreement, which in the judgment of Commission were not expended in accordance with the terms of this Agreement. Contractor must promptly refund any such funds upon demand, or at Commission's option, this repayment may be deducted from future payments owing to Contractor under this Agreement. In no event will any payment by Commission constitute a waiver by Commission of any breach of this Agreement or any default which may then exist on the part of Contractor. Neither will any payment to Contractor impair or prejudice any remedy available to Commission with respect to any breach or default by Contractor. If Contractor breaches this Agreement, Commission may recover from Contractor all remedies available at law. A waiver of any breach of this Agreement by Commission will not constitute a continuing waiver, a waiver of any subsequent breach of the same, or a waiver of any breach of another provision of this Agreement.

18.5 **Surrender of Documentation and Equipment.** At the expiration of the Term or if this Agreement is terminated earlier, Contractor must, as required by the Manual, provide to Commission all equipment, files, memoranda, documents, correspondence, and other property generated during the course of performing the Services or purchased with funds procured directly or indirectly pursuant to this Agreement. Commission may, at its sole discretion, require Contractor to provide any equipment in good working order with reasonable wear and tear.

## 19. Notices

All notices required or permitted by this Agreement or applicable law must be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail, or U.S. Postal Service Express Mail, with postage prepaid, by facsimile transmission, or by electronic transmission (email) and will be deemed sufficiently given if served in a manner specified in this Section. The addresses and addressees noted below are that Party's designated address and addressee for delivery or mailing of notices. Any Party may, by written notice to the other, specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, will be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, 3 days after the postmark date. If sent by regular mail the notice will be deemed given 48 hours after it is addressed as required in this Section and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery will be deemed given 24 hours after delivery to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means (including email) will be deemed delivered upon telephone or similar confirmation of delivery (confirmation report from fax machine is sufficient), provided a copy is also delivered via personal delivery or mail. If notice is received after 4:30 p.m. or on a Saturday, Sunday or legal holiday it will be deemed received on the next business day.

To Commission: Kendra Rogers  
Executive Director  
Children & Families Commission of Fresno County  
550 East Shaw Avenue, Suite 215  
Fresno, California 93710  
Fax: (559) 241-6510  
Email: krogers@first5fresno.org

To Contractor: «Aff\_Views\_Affiliation\_Notice\_Holder»  
«Aff\_Views\_Affiliation\_Title\_View»  
«Org\_Name»  
«Org\_Street\_Address»  
«Org\_City», «Org\_State» «Org\_Postal\_Code»  
Fax: «Org\_Fax»  
Email: «Aff\_Views\_Affiliation\_Notice\_Email»

## 20. Nondiscrimination and Equal Opportunity

Contractor must comply with all applicable laws providing equal employment opportunities. Contractor must not discriminate against any person on the grounds of race, color, creed, gender, gender identity, religion, marital status, registered domestic partner status, age, national origin or ancestry, physical or mental disability, medical condition including genetic characteristics, sexual orientation, pregnancy, citizenship status, military or veteran status, or any other characteristic made unlawful by federal, state, or local laws. These nondiscrimination and equal opportunity requirements apply, without limitation, to retirement, recruitment, advertising, hiring, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation, use of facilities, and other terms and conditions of employment

## 21. Conflict of Interest

Contractor has read and understands the provisions of Section 1090 *et seq.* and Section 87100 *et seq.* of the Government Code relating to conflict of interest of public officers and employees. Contractor represents and warrants that, upon making diligent inquiry, it is unaware of any financial or economic interest, direct or indirect, not already disclosed to Commission by the Effective Date, or that conflicts in any manner with the performance of the Services, as defined in Section 2.1 above. Contractor must comply with the requirements of Government Code Section 87100 *et seq.*

## 22. General

- 22.1 **Non-Assignment and Binding Effect.** Contractor may not assign all or any part of this Agreement, or any obligations, interest, or any monies due or which become due under this Agreement without the prior written consent of Commission, which consent may be withheld in Commission's sole discretion. Subject to the preceding sentence, this Agreement is binding upon, and inures to the benefit of, the respective heirs, executors, administrators, successors, and assigns of the Parties.
- 22.2 **Entire Agreement.** This Agreement, including all exhibits, constitutes the entire agreement between the Parties regarding the Services and supersedes all prior and contemporaneous agreements, representations, and understandings of any nature whatsoever unless expressly included in this Agreement.
- 22.3 **Conflict with Commission Policies.** Unless expressly stated otherwise in this Agreement, if there is any conflict with the terms of this Agreement and the terms of the Strategic Plan, the Manual, or other policies, procedures, or requirements of Commission, as amended, the terms of this Agreement prevail.
- 22.4 **No Authority to Bind Commission.** Contractor, in its performance of the Services or any other duties under this Agreement, has no authority to bind Commission to any agreements or undertakings.
- 22.5 **Nonexclusive Agreement.** Contractor understands that this Agreement is not an exclusive agreement and that Commission, at its sole discretion, has the right to negotiate with and enter into contracts with others providing the same or similar services to the Services provided by Contractor.
- 22.6 **Modifications.** No waiver, alteration, modification, or termination of this Agreement is valid unless made in writing.
- 22.7 **Waiver.** No covenant or condition of this Agreement may be waived except by the written consent of Commission.
- 22.8 **Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of California. The Parties agree that venue for any dispute or litigation arising under this Agreement will be in the County of Fresno, State of California, if instituted in the State courts, or the Eastern District of California (Fresno), if instituted in the Federal courts.
- 22.9 **Remedies.** Commission may pursue any and all remedies available by law as needed to enforce its rights under this Agreement.
- 22.10 **Partial Invalidity.** If any provision of this Agreement, or any portion of a provision, is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement, including, without limitation, the portions of any provision not held to be invalid, void, or

unenforceable, will nevertheless continue to be in full force and effect without being impaired or invalidated in any way.

- 22.11 **Compliance with Law.** Contractor must observe and comply with all applicable federal, state, and local laws, ordinances, rules, and regulations now in effect or enacted during the Term, each of which are incorporated into this Agreement by reference.
- 22.12 **Headings and Construction.** The subject headings of the sections and paragraphs of this Agreement are included for purposes of convenience only and do not affect the construction or interpretation of any of its provisions. All words used in this Agreement include the plural as well as the singular number, and vice versa; words used in this Agreement in the present tense include the future as well as the present; and words used in this Agreement in the masculine gender include the feminine and neuter genders, whenever the context so requires. No provision of this Agreement will be interpreted for or against a Party because that Party or its legal representative drafted the provision, and this Agreement will be construed as if jointly prepared by the Parties.
- 22.13 **Time.** Time is of the essence in this Agreement.
- 22.14 **Non-Collusion Covenant.** Contractor represents and warrants that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with Commission. Contractor has received from Commission no incentive or special payments, nor considerations not related to the provision of the Services, as defined in Section 2.1 above.
- 22.15 **Costs and Expenses.** Each Party will pay all costs and expenses incurred, or to be incurred, by it in negotiating and preparing this Agreement and its exhibits, and in closing and carrying out the transactions contemplated by this Agreement, including, without limitation, its attorneys', paralegals', and other professionals' fees and costs.

22.16 **Signature Authority.** Each Party represents that it has capacity, full power, and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. Contractor must sign the signatory authorization, attached as **Exhibit F** and incorporated into this Agreement. Contractor must complete and forward to Commission a new signatory authorization each time any name, title, or other information in the existing authorization is no longer current.

22.17 **Attorneys' Fees.** If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party is entitled to reasonable attorneys', paralegals', and other professionals' fees and costs in addition to any other reasonable relief to which it may be entitled.

**Signatures**

REVIEWED AND RECOMMENDED  
FOR APPROVAL

CONTRACTOR

By: \_\_\_\_\_  
Kendra Rogers, Executive Director

«Org\_Name»  
a \_\_\_\_\_ [state]  
\_\_\_\_\_ [type of entity]

Date of Signature: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Representative

CHILDREN AND FAMILIES COMMISSION  
OF FRESNO COUNTY

Name: \_\_\_\_\_

By: \_\_\_\_\_  
Commission Chair

Title: \_\_\_\_\_

Name: \_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

**Exhibits:**

- A. Scope of Work and Project Evaluation**
- B. Project Budget**
- C. Strategic Plan**
- D. Service Provider Manual**
- E. Individual's Handling Funds**
- F. Signatory Authorization**
- G. Capital Project Loans (when applicable)**

**Exhibit A**  
**Scope of Work**



**For Exhibit C**  
**Strategic Plan**

**[Click Here](#)**

**For Exhibit D**

**Service Provider Manual**

[Click Here](#)



**Children and Families Commission of Fresno County**

**Exhibit E – Individuals Handling Funds**

The undersigned are the **only** individuals at «Org\_Name» who control disbursements and/or receipts and certify by virtue of their signature that:

- (1) He/She has never been convicted of a felony;
- (2) He/She has not had a judgment entered against him/her based upon misappropriation of funds or similar action; and,
- (3) He/She is bonded.

_____	_____
Name	Signature
_____	_____
Title	Date
<hr/>	

_____	_____
Name	Signature
_____	_____
Title	Date
<hr/>	

_____	_____
Name	Signature
_____	_____
Title	Date
<hr/>	

_____	_____
Name	Signature
_____	_____
Title	Date



**Children and Families Commission of Fresno County**

**Exhibit F – Signatory Authorization**

I CERTIFY THAT \_\_\_\_\_,  
(name & title)

IS AUTHORIZED TO SIGN FOR, AND BY VIRTUE OF HIS/HER SIGNATURE, BIND

«Org\_Name»

Signature of Governing Body Official & Date Signed:	
Typed Name:	
Title:	
Signature of Official Authorized Above & Date Signed:	
Typed Name:	
Title:	
<b>Note: Should circumstances require a change in the above, a new signatory authorization must be completed and forwarded to Commission.</b>	

